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Oklahoma **TURNPIKE** Authority (*Formerly:* Oklahoma **TRANSPORTATION** Authority AND Oklahoma **TURNPIKE** Authority) - *See* also Title 745	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College *(exempted 11-1-98)*	740
Oklahoma **TURNPIKE** Authority (*Name changed to* Oklahoma **TRANSPORATION** Authority *11-1-99 - no rules enacted in this Title - See* Title 731)	745
Oklahoma **UNIFORM** Building Code Commission	748
Board of Trustees for the **UNIVERSITY** Center at Tulsa *(exempted 11-1-98)*	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma *(exempted 11-1-98)*	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma *(exempted 11-1-98)*	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College *(exempted 11-1-98)*	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #12-740]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 2. Incorporation By Reference
252:100-2-3. [AMENDED]
Subchapter 25. Visible Emissions and Particulates
252:100-25-5. [AMENDED]
252:100-25-5.1. [NEW]
Subchapter 31. Control of Emission of Sulfur Compounds
Part 5. New Equipment Standards
252:100-31-25. [AMENDED]
Appendix Q. Incorporation By Reference [REVOKED]
Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to move an existing continuous opacity monitoring requirement from OAC 252:100-31, Control of Emission of Sulfur Compounds, to OAC 252:100-25, Visible Emissions and Particulates, which is a more appropriate location.

The Department is proposing to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to EPA regulations. Included are changes or additions to 40 CFR Part 60, New Source Performance Standards (NSPS), and Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP). In addition, the Department is proposing to update language in Subchapter 2, Incorporation By Reference, to reflect the latest date of incorporation of EPA regulations in Appendix Q.

AUTHORITY:

The powers and duties of the Environmental Quality Board are set out in 27A O.S. Section 2-2-101 and 27A O.S. Section 2-5-106 and those of the Air Quality Advisory Council in 27A O.S. Section 2-2-201 and 27A O.S. Section 2-5-107. The legal authority authorizing the proposed rules is found in the Oklahoma Clean Air Act, 27A O.S. Sections 2-5-101 through - 117, specifically 27A O.S. Section 2-5-105 for Subchapters 2, 25, and 31 and Appendix Q; 27A O.S. Section 2-5-112 for Subchapters 25 and 31; and 27A O.S. Section 2-5-114 for Subchapter 2 and Appendix Q.

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 18, 2012. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Oral comments may be made at the July 18, 2012 hearing and at the August 21, 2012 Environmental Quality Board meeting.

PUBLIC HEARINGS:

A public hearing is scheduled before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 18, 2012, at the Tulsa Campus of Oklahoma State University, 700 N. Greenwood, Tulsa, Oklahoma 74106.

Also, a public hearing is scheduled before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 21, 2012, at Northern Oklahoma College - Enid Campus, Montgomery Hall, 100 S. University Avenue, Enid, Oklahoma 73701.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 CFR Section 51.102 and 27A O.S. Section 2-5-107(6)(c), and to the State Title V (Part 70) Implementation Plan under the requirements of 40 CFR Part 70 and 27A O.S. Section 2-5-112(B)(9)

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENTS:

The rule impact statements will be available on and after June 15, 2012 on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please

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

PERSONS WITH DISABILITIES:

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

[OAR Docket #12-740; filed 5-25-12]

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

[OAR Docket #12-741]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:303-1-1. [AMENDED]

SUMMARY:

The rules proposed in this Chapter provide standards for accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons and apply to laboratories accredited or applying to be accredited by the Department of Environmental Quality (DEQ) consistent with The NELAC Institute (TNI) standards. The implementation date was originally January 2013.

The DEQ has determined that the implementation date of January 2013 should be extended to January 2016 to allow the DEQ to evaluate the enforceability of the The NELAC Institute rules as adopted by reference and to make adjustments as needed to develop an enforceable laboratory accreditation program. The additional time will also allow laboratories to prepare for compliance with an enforceable laboratory accreditation program, whether continuing with the TNI standards as adopted by reference or developing additional state rules consistent with the TNI accreditation program.

AUTHORITY:

Environmental Quality Board; 27A O.S. § 2-2-101; Laboratory Services Advisory Council, 27A O.S. § 2-2-201; Laboratory Services and Certification, 27A O.S. §§ 2-4-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from June 15, 2012 through July 20, 2012.

PUBLIC HEARINGS:

Before the Laboratory Certification Advisory Council at 1:30 p.m. on July 26, 2012 in the 2nd floor Training Room of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board on November 14, 2012, at 9:30 a.m. in Lawton, Oklahoma, at a specific location to be announced.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person or may viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the DEQ and may be requested from the contact person.

CONTACT PERSON:

David Caldwell, State Environmental Laboratory Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at david.caldwell@deq.ok.gov, phone 405-702-1000, or fax 405-702-1001.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Laboratory Services Advisory Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-1000 or by using TDD relay number 1-800-522-8506.

[OAR Docket #12-741; filed 5-25-12]

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

[OAR Docket #12-742]

RULEMAKING ACTION:

Notice of proposed EMERGENCY rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

252:303-1-1. [AMENDED]

SUMMARY:

The rules proposed in this Chapter provide standards for accreditation of privately and publicly owned laboratories for performance of analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons and apply to laboratories accredited or applying to be accredited by the Department of Environmental Quality (DEQ) consistent with The NELAC Institute (TNI) standards. The implementation date was originally January 2013.

The DEQ has determined that the implementation date of January 2013 should be extended to January 2016 and finds that an emergency rulemaking is necessary to avoid serious injury to the public interest.

FINDING OF EMERGENCY:

Publically and privately owned laboratories performing analyses of water and wastewater, solid and hazardous waste, soil, sludge and petroleum hydrocarbons are currently accredited by the Department of Environmental Quality (DEQ) under OAC 252:301. New accreditation rules, OAC 252:303, consistent with a national environmental laboratory accreditation system (The NELAC Institute, i.e. TNI) were promulgated in 2011 with an implementation date of January 1, 2013.

In early March, 2012, the DEQ learned that other states that had adopted rules consistent with the national program found a lack of regulatory language within the TNI standards and were unable to provide effective enforcement due to the ambiguity and uncertainty in the TNI standards. Therefore, the DEQ decided not to submit its application to become a TNI accreditation body until these issues can be resolved and new proposed rules can be developed to address the ambiguity and uncertainty in the TNI standards.

The DEQ discussed these issues with the Laboratory Services Advisory Council in a regular meeting held at the DEQ building in Oklahoma City on March 13, 2012, and the Council scheduled a Special Meeting to consider this proposed rule, which would change the implementation date from January 1, 2013, to January 1, 2016. On March 28, 2012, the DEQ notified TNI that Oklahoma was postponing its application to be recognized as a TNI accreditation body until the recent recognition of a lack of regulatory language within the TNI standards has been resolved.

The DEQ determined that the implementation date of January 2013 should be extended to January 2016 so that public and private laboratories currently accredited by the DEQ or applying to be accredited by the DEQ will not be subject to unenforceable, ambiguous and uncertain TNI standards in January 2013 and finds that an emergency rulemaking is necessary to extend the implementation date of the TNI Laboratory Accreditation rules until 2016 to avoid serious prejudice to the public interest.

The emergency situation was not created by the DEQ's delay or inaction, nor could it have been averted. DEQ acted in all due haste to bring the issue of regulatory ambiguity and uncertainty to the Council's attention by discussing the situation with the Council in a public meeting within two weeks of learning of other states facing unenforceable TNI accreditation programs and also by notifying TNI of the DEQ's decision to postpone its application to become recognized as a TNI accreditation body until issues are resolved.

The DEQ believes that its evaluation of a known, real problem that other states are facing constitutes credible evidence of sufficient quality and probative value to enable a person of reasonable caution to support the conclusion that an emergency rulemaking is necessary to avoid serious prejudice to the public interest.

In order for the TNI Laboratory Accreditation rules to be postponed for three years, an emergency rulemaking, followed by a permanent rulemaking, is necessary so that the rules will not be implemented in January, 2013. The DEQ therefore finds that serious prejudice to the public interest exists, requiring an emergency rule adoption.

AUTHORITY:

Environmental Quality Board; 27A O.S. § 2-2-101, Laboratory Services Advisory Council, 27A O.S. § 2-2-201; Laboratory Services and Certification, 27A O.S. §§ 2-4-101 *et seq.*

COMMENT PERIOD:

Deliver or mail written comments on the proposed rules to the contact person from June 15, 2012 through July 20, 2012. Oral comments may be made a special meeting of the Laboratory Services Advisory Council on July 26, 2012 and at the Environmental Quality Board meeting on November 14, 2012.

PUBLIC HEARINGS:

Before the Laboratory Certification Advisory Council at 1:30 p.m. on July 26, 2012 in the 2nd floor Training Room of the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102.

Before the Environmental Quality Board on November 14, 2012, at 9:30 a.m. in Lawton, Oklahoma, at a specific location to be announced.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPY OF PROPOSED RULE CHANGES:

A copy of the proposed rules may be obtained from the contact person, may be viewed on the DEQ web site at www.deq.state.ok.us or may be reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

The Rule Impact Statement for the proposed rules will be on file at the DEQ and may be requested from the contact person.

CONTACT PERSON:

David Caldwell, State Environmental Laboratory Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at david.caldwell@deq.ok.gov, phone 405-702-1000, or fax 405-702-1001.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the public hearing to be held before the Laboratory Services Advisory Council and need assistance should notify the contact person three days in advance of the meeting during business hours at 405-702-1000 or by using TDD relay number 1-800-522-8506.

[OAR Docket #12-742; filed 5-25-12]

Cancelled Hearings/Comment Periods

If an agency cancels a hearing or comment period announced in a published Notice of Rulemaking Intent, the agency must submit a notice of such cancellation to the Office of Administrative Rules (OAR). The OAR publishes the cancellation notice in the next possible issue of the *Register.*

For additional information on cancelled hearings and comment periods, see OAC 655:10-7-27.

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS

[OAR Docket #12-627]

RULEMAKING ACTION:

Cancelled public hearing relating to a proposed PERMANENT rulemaking action

PROPOSED RULES:

Subchapter 13. Supervision of Advanced Practice Nurse with Prescriptive Authority

435:10-13-2. Eligibility to supervise advanced practice nurse with prescriptive authority [AMENDED]

REGISTER PUBLICATION OF NOTICE:

The Notice of Rulemaking Intent for this action was published at 29 Ok Reg 371.

CANCELLED PUBLIC HEARING:

May 17, 2012, at 9:00 a.m. at the office of the Board, 101 N.E. 51st Street, Oklahoma City, Oklahoma. A public hearing on the proposed amendments will be scheduled for a future date.

ADDITIONAL INFORMATION:

For additional information, contact Kathy Plant, Executive Secretary, at (405) 962-1400 ext 122 or at kplant@okmedicalboard.org.

[OAR Docket #12-627; filed 5-11-12]

Gubernatorial Approvals

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

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

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

[OAR Docket #12-722]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 23. Registration
10:15-23-2.1. [NEW]
Subchapter 25. Permits
10:15-25-4. [AMENDED]
GUBERNATORIAL APPROVAL:
March 7, 2012

[OAR Docket #12-722; filed 5-24-12]

TITLE 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTERED INTERIOR DESIGNERS OF OKLAHOMA
CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF INTERIOR DESIGNERS

[OAR Docket #12-707]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules.
RULES:
Subchapter 1. General Provisions
55:10-1-3. [AMENDED]
Subchapter 3. Administrative Operations
55:10-3-3. [AMENDED]
55:10-3-6. [AMENDED]
55:10-3-11. [AMENDED]
55:10-3-13. [AMENDED]
Subchapter 5. Application and Eligibility for Licensing or Registration
55:10-5-1. [AMENDED]
55:10-5-2. [AMENDED]
55:10-5-4. [AMENDED]
55:10-5-5. [AMENDED]
55:10-5-6. [AMENDED]
55:10-5-7. [AMENDED]
55:10-5-8. [AMENDED]
55:10-5-10. [AMENDED]
55:10-5-11. [AMENDED]
Subchapter 7. Examination
55:10-7-1. [AMENDED]
55:10-7-2. [AMENDED]
55:10-7-9. [AMENDED]
Subchapter 9. Licensing and Registration
55:10-9-1. [AMENDED]
55:10-9-6. [AMENDED]
55:10-9-8. [AMENDED]
55:10-9-10. [AMENDED]
Subchapter 11. Rules of Professional Conduct
55:10-11-7. [AMENDED]
55:10-11-9. [AMENDED]
55:10-11-10. [AMENDED]
Subchapter 13. Organizational Practice
55:10-13-1. [AMENDED]
55:10-13-2. [AMENDED]
55:10-13-4. [AMENDED]
55:10-13-5. [AMENDED]
55:10-13-6. [AMENDED]
55:10-13-7. [AMENDED]
55:10-13-8. [AMENDED]
55:10-13-9. [AMENDED]
55:10-13-10. [AMENDED]
55:10-13-12. [AMENDED]
55:10-13-13. [AMENDED]
55:10-13-16. [AMENDED]
55:10-13-20. [AMENDED]
Subchapter 15. Violations
55:10-15-4. [AMENDED]
55:10-15-9. [AMENDED]
55:10-15-11. [AMENDED]
Subchapter 17. Continuing Education Requirements
55:10-17-6. [AMENDED]
55:10-17-7. [AMENDED]
55:10-17-9. [AMENDED]
55:10-17-10. [AMENDED]
55:10-17-12. [AMENDED]
GUBERNATORIAL APPROVAL:
March 30, 2012

[OAR Docket #12-707; filed 5-23-12]

TITLE 165. CORPORATION COMMISSION
CHAPTER 35. ELECTRIC UTILITY RULES

[OAR Docket #12-634]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 34. Competitive Procurement
165:35-34-1. Purpose of this Subchapter [AMENDED]
165:35-34-3. RFP Competitive Bidding Procurement Process for Long Term Fuel Transportation, Long Term Fuel Storage, Long Term Electric Generation and Long Term Purchase Power Agreements [AMENDED]
165:35-34-4. Commodity Fuel Supply Competitive Bidding Procurement Process for a Term Greater than Five Years [NEW]
Subchapter 37. Integrated Resource Planning
165:35-37-1. Purpose of this Subchapter [AMENDED]
165:35-37-4. Integrated Resource Plan Reviews [AMENDED]
Subchapter 43. Transmission Only Utility [NEW]
165:35-43-1. Purpose of this Subchapter [NEW]
165:35-43-2. Definitions [NEW]
165:35-43-3. Recognition by the Commission [NEW]
165:35-43-4. Reporting [NEW]
165:35-43-5. Commission Consideration [NEW]
165:35-43-6. Determining Assessment Fees [NEW]
165:35-43-7. Decommissioning of Transmission Lines [NEW]
GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-634; filed 5-15-12]

TITLE 175. STATE BOARD OF COSMETOLOGY
CHAPTER 10. LICENSURE OF COSMETOLOGISTS, SALONS, SCHOOLS AND RELATED ESTABLISHMENTS

[OAR Docket #12-724]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Sanitation and Safety Standards for Cosmetology Establishments, Salons and Schools
175:10-7-5 [AMENDED]
Subchapter 9. Licensure of Cosmetologists and Related Occupations
Part 5. Demonstrators; Cosmetic Studios; Trade Shows; Guest Artists; Wig Dressing
175:10-9-55 [NEW]
GUBERNATORIAL APPROVAL:
April 16, 2012

[OAR Docket #12-724; filed 5-24-12

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #12-681]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
210:10-1-20. Implementation of policies prohibiting harassment, intimidation, and bullying [NEW]
Subchapter 9. Lifelong Learning
210:10-9-6. General education development (GED) testing program [AMENDED]
GUBERNATORIAL APPROVAL:
May 14, 2012

[OAR Docket #12-681; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #12-682]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Student Assessment
210:10-13-22. Implementation of a System of School Improvement and Accountability [NEW]
GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-682; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #12-680]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Priority Academic Student Skills
Part 3. Pre-Kindergarten and Kindergarten
210:15-3-5.8. Social studies [REVOKED]
Part 11. Social Studies
210:15-3-90. ~~Overview~~Prekindergarten: Our America [AMENDED]

210:15-3-90.1. ~~Definitions~~Kindergarten: Symbols of America [AMENDED]
210:15-3-91. ~~Social Studies for grade 1~~Grade 1: American Heroes [AMENDED]
210:15-3-92. ~~Social Studies for grade 2~~Grade 2: Our Democratic Heritage [AMENDED]
210:15-3-93. ~~Social Studies for grade 3~~Grade 3: Oklahoma Studies [AMENDED]
210:15-3-94. ~~Social Studies for grade 4~~Grade 4: United States Studies: Regional Geography and History- The Why of Where: Places, Patterns of Settlement, and Global Interaction [AMENDED]
210:15-3-95. ~~Social Studies for grade 5~~Grade 5: United States Studies: Creating the United States: The Foundation, Formation, and Transformation of the American Nation, 1607-1806 [AMENDED]
210:15-3-96. ~~World studies for grade 6~~Grade 6: World Geography: The Western Hemisphere- The Why of Where: Places, Patterns of Settlement, and Global Interaction [AMENDED]
210:15-3-97. ~~World geography for grade 7~~Grade 7: World Geography: The Eastern Hemisphere- The Why of Where: Places, Patterns of Settlement, and Global Interaction [AMENDED]
210:15-3-98. ~~United States History 1760-1877 for grade 8~~Grade 8- Creating the United States: The Foundation, Formation, and Transformation of the American Nation, 1754-1877 [AMENDED]
210:15-3-99. Economics ~~for high school~~- Incentives and Disincentives: Land, Labor, Capital, and Entrepreneurship [AMENDED]
210:15-3-100. Oklahoma history ~~for high school~~and Government- The Foundation, Formation, and Transformation of the State of Oklahoma [AMENDED]
210:15-3-100.1. Psychology- Foundations and Formation of Human Development [NEW]
210:15-3-100.2. Sociology- Formations and Patterns of Group Behavior [NEW]
210:15-3-101. United States government ~~for high school~~- Freedom for all: Expanding Rights and Responsibilities [AMENDED]
210:15-3-102. United States History ~~1850 to the present for high school~~Creating the United States: The American Nation in Transformation, 1978 to the present [AMENDED]
210:15-3-103. ~~World geography for high school~~World History- Cultural Connections Turning Points, and Transformation of the World into the Modern [AMENDED]
210:15-3-104. ~~World History for high school~~World Human Geography- The Why of Where: Places, Patterns of Settlement, and Global Interactions [AMENDED]
Subchapter 8. Six-Year Comprehensive Local Education Plan
210:15-8-3. Component of the six-year plan [REVOKED]
Subchapter 23. Gifted and Talented Education Regulations and Program Approval Standards
210:15-23-10. Failure to report [NEW]

GUBERNATORIAL APPROVAL:
May 14, 2012

[OAR Docket #12-680; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 20. STAFF

[OAR Docket #12-679]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 9. Professional Standards: Teacher Education and Certification
Part 9. Teacher Certification
210:20-9-98. Administrative requirements of teacher certification [AMENDED]
210:20-9-104. Certification for languages with no subject area examination [NEW]

GUBERNATORIAL APPROVAL:
May 14, 2012

[OAR Docket #12-679; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 25. FINANCE

[OAR Docket #12-678]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Budgeting and Business Management
Part 1. Implementation
210:25-5-5. Auditing [AMENDED]

GUBERNATORIAL APPROVAL:
May 14, 2012

[OAR Docket #12-678; filed 5-22-12]

TITLE 265. STATE FIRE MARSHAL COMMISSION
CHAPTER 45. FIREWORKS

[OAR Docket #12-646]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Licensing, Permits, Sales, Inspections and Penalties [NEW]
265:45-1-1 [NEW]
265:45-1-2 [NEW]
265:45-1-3 [NEW]
265:45-1-4 [NEW]
265:45-1-5 [NEW]
265:45-1-6 [NEW]
GUBERNATORIAL APPROVAL:
May 16, 2012

[OAR Docket #12-646; filed 5-18-12]

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

[OAR Docket #12-663]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 1. Disease and Injury Reporting
310:515-1-3 Diseases to be reported immediately [AMENDED]
310:515-1-4 Additional diseases, conditions, and injuries to be reported [AMENDED]
310:515-1-8 Organisms/specimens to be sent to the Public Health Laboratory [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-663; filed 5-22-12]

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

[OAR Docket #12-684]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULE:
325:20-1-21 [AMENDED]
325:20-1-22 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-684; filed 5-22-12]

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

[OAR Docket #12-685]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULE:
325:45-1-18 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-685; filed 5-22-12]

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

[OAR Docket #12-686]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULE:
325:75-1-15 [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-686; filed 5-22-12]

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

[OAR Docket #12-701]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provisions
340:2-1-8 [AMENDED]
Part 4. Alcohol and Drug Testing Applicable to OKDHS Employees and Applicants
340:2-1-42 [AMENDED]
(Reference WF 12-03)
GUBERNATORIAL APPROVAL:
May 10, 2012

[OAR Docket #12-701; filed 5-23-12]

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

[OAR Docket #12-755]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-35 [AMENDED]
(Reference APA WF 12-02)
GUBERNATORIAL APPROVAL:
May 10, 2012

[OAR Docket #12-755; filed 5-25-12]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES

[OAR Docket #12-756]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-6 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-8.4 through 340:110-1- 8.10 [NEW]
340:110-1-9 through 340:110-1-9.1 [AMENDED]
340:110-1-9.3 [AMENDED]
340:110-1-10.1 [AMENDED]
340:110-1-13 [AMENDED]
340:110-1-15 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-44 [AMENDED]
340:110-1-46 [AMENDED]
340:110-1-47.2 [AMENDED]
340:110-1-54 through 340:110-1-54.1 [AMENDED]
(Reference WF 12-01)
GUBERNATORIAL APPROVAL:
May 10, 2012

[OAR Docket #12-756; filed 5-25-12]

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

[OAR Docket #12-752]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
380:30-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2012

[OAR Docket #12-752; filed 5-25-12]

TITLE 460. DEPARTMENT OF MINES
CHAPTER 3. NON-COAL RULES OF PRACTICE AND PROCEDURES

[OAR Docket #12-630]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions
460:3-1-5 [AMENDED]
Appendix A. Motion for Limited Admission to Practice this Administrative Hearing [REVOKED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-630; filed 5-14-12]

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

[OAR Docket #12-631]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 17. Review, Public Participation and Approval of Conditions Excluding Limited Use Permits
460:10-17-6 [AMENDED]
Subchapter 35. State Inspection
460:10-35-8 [NEW]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-631; filed 5-14-12]

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

[OAR Docket #12-745]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
PROPOSED RULES:
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22 [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rate of Pay
530:10-7-19 [REVOKED]
Subchapter 9. Recruitment and Selection
Part 3. Written and Performance Tests
530:10-9-37 [AMENDED]
530:10-9-38 [AMENDED]
Part 5. Registers
530:10-9-52 [AMENDED]
Part 9. Classified Appointments
530:10-9-100 [AMENDED]
Part 11. Direct Hire Authority
530:10-9-111 [AMENDED]
Part 13. Veterans Preference
530:10-9-131 [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-58 [NEW]
Subchapter 17. Performance Evaluation and Career Enhancement Programs Part 7. Carl Albert Public Internship Program 530:10-17-77 [AMENDED]
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2012.

[OAR Docket #12-745; filed 5-25-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #12-666]

RULEMAKING ACTION:
Notice of Gubernatorial Approval
RULES:
Subchapter 15. Sale and Auction of Surplus and Forfeited Property
595:1-15-3. Sale of surplus property [AMENDED]
GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-666; filed 5-22-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #12-667]

RULEMAKING ACTION:
Notice of Gubernatorial Approval
RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 1. Purpose
595:10-1-1. Purpose [AMENDED]
Part 2. Application for Initial Driver License
595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
595:10-1-5. Graduated driver license; persons under eighteen (18) years of age [AMENDED]
595:10-1-8. Applicability, substitutions, limitations, and additions to federal rules adopted by reference [REVOKED]
595:10-1-9. Waiver of certain physical conditions for Class A, B, or C commercial driver license applicants [REVOKED]
Part 3. Driver License Renewal
595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
595:10-1-12. Oklahoma licensee temporarily residing out of the state [AMENDED]
Part 5. Driver License Replacement
595:10-1-18. Procedure for obtaining a replacement driver license [AMENDED]
595:10-1-19. Oklahoma licensee temporarily residing out of the state [REVOKED]
Part 7. Identification Cards
595:10-1-27. Procedure for obtaining a replacement identification card [AMENDED]
595:10-1-28. Oklahoma identification card holder temporarily residing out of the state [AMENDED]
Part 9. Change of Name on a Driver License or Identification Card
595:10-1-35. Procedure to make a change of name on a driver license or an identification card [AMENDED]
Part 13. Motor License Agents
595:10-1-50. Identification required [AMENDED]
595:10-1-51. Operational procedures [AMENDED]
595:10-1-56. Renewal of driver license or identification cards [AMENDED]
Part 19. Driver License and Identification Card Content

595:10-1-91. Information displayed on driver licenses [AMENDED]
595:10-1-92. Driving restriction codes [AMENDED]
595:10-1-93. Information displayed on identification cards [AMENDED]
Subchapter 3. Examination
595:10-3-1. Purpose [AMENDED]
595:10-3-4. Application for examination [AMENDED]
595:10-3-9. Skills examination [AMENDED]
Subchapter 5. Medical Aspects
Part 1. Medical Conditions
595:10-5-5. Metabolic diseases [AMENDED]
Subchapter 13. Parent-taught Driver Education
595:10-13-5. Requirements for parents and students [AMENDED]

GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-667; filed 5-22-12]

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

[OAR Docket #12-668]

RULEMAKING ACTION:
Notice of Gubernatorial Approval

RULES:
Subchapter 1. General Provisions [AMENDED]
595:25-1-2. Definitions [AMENDED]
595:25-1-3. General policies [AMENDED]
Subchapter 5. All Wrecker Operators [AMENDED]
595:25-5-6. Schedule of rates and fees~~; indoor storage~~ [AMENDED]
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements [AMENDED]
595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]

GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-668; filed 5-22-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

[OAR Docket #12-669]

RULEMAKING ACTION:
Notice of Gubernatorial Approval

RULES:
595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]
595:35-1-9. Hearings [AMENDED]
595:35-1-10. Administrative penalty assessment guidelines [AMENDED]

GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-669; filed 5-22-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 50. TABS, TAGS, SIGNS AND INSIGNIAS

[OAR Docket #12-670]

RULEMAKING ACTION:
Notice of Gubernatorial Approval

RULES:
Subchapter 3. Parking Placards for Physically Disabled Persons
595:50-3-2. Physically disabled parking placards [AMENDED]
595:50-3-6. Duplication of physically disabled parking placards; replacement of a lost stolen, or defective physically disabled parking placard [AMENDED]

GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-670; filed 5-22-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 60. AUTHORIZATION TO CARRY CONCEALED FIREARMS

[OAR Docket #12-671]

RULEMAKING ACTION:
Notice of Gubernatorial Approval

RULES:
595:60-1-1. Purpose [AMENDED]

595:60-1-4. Eligibility [AMENDED]
GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-671; filed 5-22-12]

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

[OAR Docket #12-622]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
605:10-1-2. [AMENDED]
605:10-1-3. [AMENDED]
Subchapter 3. Education and Examination Requirements
605:10-3-5. [AMENDED]
605:10-3-7. [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1. [AMENDED]
605:10-5-1.1. [AMENDED]
605:10-5-2. [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2. [AMENDED]
605:10-7-3. [AMENDED]
605:10-7-4. [AMENDED]
605:10-7-7. [AMENDED]
605:10-7-8. [AMENDED]
605:10-7-8.1. [AMENDED]
605:10-7-8.2. [AMENDED]
605:10-7-8.3. [AMENDED]
605:10-7-8.4. [NEW]
Subchapter 9. Broker's Operational Procedures
605:10-9-1. [AMENDED]
605:10-9-4. [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2. [AMENDED]
605:10-11-3. [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. [AMENDED]
Subchapter 15. Disclosures
605:10-15-3. [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-4. [AMENDED]
605:10-17-6. [AMENDED]
APPENDIX A. Residential Property Condition Disclosure Statement [REVOKED]
APPENDIX A. Residential Property Condition Disclosure Statement [NEW]
GUBERNATORIAL APPROVAL:
April 27, 2012

[OAR Docket #12-622; filed 5-10-12]

TITLE 655. SECRETARY OF STATE
CHAPTER 10. ADMINISTRATIVE RULES ON RULEMAKING

[OAR Docket #12-636]

RULEMAKING ACTION:
Notice of gubernatorial approval of PERMANENT rules
RULES:
Subchapter 1. General Provisions
655:10-1-2. [AMENDED]
Subchapter 7. Preparation of Documents
Part 1. General Provisions
655:10-7-1 [AMENDED]
Part 3. Rule Documents
655:10-7-11 [AMENDED]
655:10-7-13 [AMENDED]
Part 5. Notice Documents
655:10-7-32 [AMENDED]
655:10-7-33 [AMENDED]
Subchapter 9. Submission of Documents
655:10-9-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 2, 2012

[OAR Docket #12-636; filed 5-16-12]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #12-632]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Bidding Procedures
720:10-3-3. Information necessary to complete bid [AMENDED]
720:10-3-5. Materials to be considered for adoption [AMENDED]
720:10-3-9. Local district sampling [AMENDED]
GUBERNATORIAL APPROVAL:
April 13, 2012

[OAR Docket #12-632; filed 5-15-12]

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

[OAR Docket #12-726]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Technology Centers Education
780:15-3-1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-726; filed 05-24-12]

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

[OAR Docket #12-727]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs
780:20-3-2. [AMENDED]
780:20-3-4. [AMENDED]
GUBERNATORIAL APPROVAL:
May 1, 2012

[OAR Docket #12-727; filed 5-24-12]

Gubernatorial Disapprovals

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

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

TITLE 175. STATE BOARD OF COSMETOLOGY
CHAPTER 10. LICENSURE OF COSMETOLOGISTS, SALONS, SCHOOLS AND RELATED ESTABLISHMENTS

[OAR Docket #12-723]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 7. Sanitation and Safety Standards for Cosmetology Establishments, Salon and Schools

175:10-7-6 [AMENDED]

175:10-7-31 [NEW]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received April 16, 2012

[OAR Docket #12-723; filed 5-24-12]

Legislative Disapprovals

Upon disapproval by the Legislature of an agency's rules, the agency must publish a notice of such legislative disapproval in the *Register.*

For additional information on legislative disapprovals, see 75 O.S., Section 308.

TITLE 235. OKLAHOMA FUNERAL BOARD CHAPTER 10. FUNERAL SERVICES LICENSING

[OAR Docket #12-683]

INTENDED RULEMAKING ACTION:

Legislative disapproval of PERMANENT rules.

PROPOSED RULES:

Subchapter 1. General Provisions
235: 10-1-2 [AMENDED]
235: 10-1-4 [AMENDED]
Subchapter 3. Qualifications and Requirements for License
235: 10-3-2 [AMENDED]
Subchapter 5. Licensing Fees
235: 10-5-1 [AMENDED]
235: 10-5-2 [AMENDED]
Subchapter 7. Licensure renewal, Revocation, and Suspension
235: 10-7-2 [AMENDED]
Subchapter 11. Minimum Standards of Performance
235: 10-11-1 [AMENDED]
Subchapter 13. Continuing Education
235: 10-13-10 [AMENDED]

LEGISLATIVE DISAPPROVAL:

Failure of the Legislature to actively approve the rules by joint resolution prior to sine die adjournment resulted in disapproval on May 25, 2012.

[OAR Docket #12-683; filed 5-22-12]

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

[OAR Docket #12-754]

RULEMAKING ACTION:

Legislative disapproval of PERMANENT rules

RULES:

Subchapter 5. Operational Policies
Part 25. Federal Offset Programs
340:25-5-215 [AMENDED]
340:25-5-215.1 [AMENDED]
Part 27. State Tax Refund Offset Program
340:25-5-235 [AMENDED]
(Reference WF 11-11)

LEGISLATIVE DISAPPROVAL:

Failure of the Legislature to actively approve the rule by joint resolution prior to sine die adjournment resulted in disapproval on May 25, 2012.

[OAR Docket #12-754; filed 5-25-12]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-747]

RULEMAKING ACTION:

Legislative disapproval of PERMANENT rules

RULES:

Subchapter 9. Description of Forms and Instructions
365:1-9-18. Bail bond forms [AMENDED]

LEGISLATIVE DISAPPROVAL:

Failure of the Legislature to actively approve the rule by joint resolution prior to sine die adjournment resulted in disapproval on May 25, 2012.

[OAR Docket #12-747; filed 5-25-12]

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 540. PHYSICIAN MANPOWER TRAINING COMMISSION
CHAPTER 50. OKLAHOMA MEDICAL LOAN REPAYMENT PROGRAM

[OAR Docket #12-664]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
540:50-1-1 through 540:50-1-9 [NEW]
AUTHORITY:
Physician Manpower Training Commission; 63 O.S., 1-2720
DATES:
Adoption:
April 19, 2012
Approved by Governor:
May 16, 2012
Effective:
July 1, 2012
Expiration:
Effective through July 14, 2013 unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
These new rules are considered an emergency to begin administering the Oklahoma Medical Loan Repayment Program that will be effective July 1, 2012 per Section 1-2720 Title 63 of the Oklahoma State Statutes.
ANALYSIS:
Provisions related to the purpose, terms, conditions, eligibility, amount, method of payment and renewal Oklahoma Medical Loan Repayment Program to reflect statutory language.
CONTACT PERSON:
Cindy A. Carter (405) 843-5667.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), WITH A LATER EFFECTIVE DATE OF JULY 1, 2012:

540:50-1-1. Purpose

The purpose of the Oklahoma Medical Loan Repayment Program (OMLRP) is to provide financial assistance to physicians in repaying educational loans when they elect to provide health care in rural and underserved areas of Oklahoma. *The Program, depending upon and limited to available funding, shall provide educational loan repayment assistance to Oklahoma licensed primary care physicians who agree to establish a practice in a community located in Oklahoma approved by the Commission.* [63:1-2721(3)]

540:50-1-2. Statutory administration

The Physician Manpower Training Commission shall administer the Oklahoma Medical Loan Repayment Program. [63:1-2721(A)(1)]The Oklahoma Medical Loan Repayment Program shall be administered by the Physician Manpower Training Commission pursuant to rules promulgated by the Commission and shall be funded based on an annual estimate of need as determined by the Commission and the actual funds available to the Program for expenditure.

540:50-1-3. Terms and conditions of loans

(a) The terms and conditions governing the Program shall be as prescribed and formulated by the Physician Manpower Training Commission. *The physician shall agree to practice in the designated need areas identified by the Commission for no fewer than two (2) consecutive years as a condition of the loan repayment. If the physician does not fulfill the service obligation, the Commission may collect from the participant the entire amount of loan payments made under the Program plus interest.* [63:1-2721(D)] The contract shall specify that in case of default the physician shall be required to repay all funds that they received plus interest that equals the prime rate plus one-percent (1%).

(b) Physicians must submit proof that they are not currently obligated, and will not become obligated, to any other repayment program that has a conflicting service obligation.

540:50-1-4. Eligibility

(a) A physician shall be eligible to participate in the OMLRP if the physician:

(1) *Is licensed to practice medicine in Oklahoma;*

(2) *Is a new primary care residency graduate.*

(3) *Is a current practicing physician and has met criteria established by the Commission.* [63:1-2721(C)(1-3)]

(4) *Agree to provide medical care and services to Medicaid recipients as authorized by the Oklahoma Health Care Authority* [63:1-2721(B)]

(b) *"Primary care physicians" shall mean physicians practicing in family medicine, geriatrics, general internal medicine, general pediatrics, obstetrics/gynecology, or emergency medicine.* [63:1-2721 (A)(2)]

540:50-1-5. Amount and method of payment

(a) Physicians would have to provide documentation of legitimate educational debt in the amount of $160,000 or above to receive the maximum amount available. If total debt is less than $160,000 a contract would be tailored, on a prorated basis, to provide an amount not to exceed legitimate educational debt of the physician. *Prior to any disbursement, the Commission shall certify and properly review reports submitted by the participating physician detailing performance of activities in accordance with the Program.* [63:1-2721(4)]

(b) Maximum amounts of financial assistance: first year $25,000; second year $35,000; third year $45,000; and fourth year $55,000. Payments would be made after the physician completed the first year and on each anniversary thereafter, up to a maximum of four years. Physicians would be required to sign on to the Program for a minimum of two years. *At the conclusion of an initial two-year period, the Commission shall review the performance in the Program of the participating physician and determine whether an award may be granted for additional years pursuant to rules promulgated by the Commission.* [63:1-2721(A)(5)]

540:50-1-6. Procedures for administering loans

The Commission shall promulgate and adopt procedures as may be necessary to carry out the administration of the program. The Commission shall delineate the following procedures:

(1) **Promulgation of information concerning loans.** Every reasonable effort shall be made to contact all eligible physicians concerning the availability of the program. *Preference will be given to graduates of the primary care residency programs affiliated with the Oklahoma State University College of Osteopathic Medicine, the University of Oklahoma College of Medicine and the teaching hospitals affiliated with both schools of medicine.* [63:1-2721(C)(2)]

(2) **Applications.** All interested physicians shall file an application with the Physician Manpower Training Commission. This application can be submitted at any time during the year. Applications are available at www.pmtc.ok.gov and in the office of the Physician Manpower Training Commission.

(3) **Approval by the Commission.** Applications shall be submitted to the Commission for approval at any regular Commission meeting. Applications will be reviewed in the order they are received and will be approved or denied as determined by the Commission.

(4) **Renewal of contracts.** The original contract shall be guaranteed for the initial year, and renewed each anniversary thereafter contingent upon available funding.

540:50-1-7. Repayment by practice or repayment of moniesreceived

(a) Each physician shall repay the financial assistance received by practicing full time in an approved community in Oklahoma. The period shall begin on the date the physician begins to practice in the approved community.

(b) Repayment of the total amount received, plus interest, and litigation costs as assessed by the Commission, upon failure of the physician to fulfill the contractual obligations, shall be made payable to the Commission.

540:50-1-8. Applicant contracts

(a) Each physician shall enter into a contract with the Commission agreeing to the terms and conditions upon which financial assistance shall be granted to the physician.

(b) The physician shall fulfill their contractual obligation to a qualifying community as outlined in the original contract.

(c) The contract shall include such terms and provisions as will carry out the full purpose and intent of the Program, and shall be in a form prepared and approved by the Attorney General.

(d) The contract shall be signed by the Executive Director on behalf of the Commission, and by the applicant. In the event the applicant is married, the contract shall also be cosigned by the applicant's spouse.

(e) The Commission may file suit against any physician, and cosigner if applicable, for any balance due the Commission on any contract. The Commission may cancel any contract made between it and any physician upon cause deemed sufficient by the Commission.

(f) The Commission shall maintain copies of the contracts in its offices.

540:50-1-9. Annual reports to Governor and Legislature

The Commission shall present a report on the operation of the Program to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate within one (1) month of the beginning of each regular session of the Legislature, including but not limited to the progress made in accomplishing the goal of the Program. [63:1-2721(E)]

[OAR Docket #12-664; filed 5-22-12]

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

[OAR Docket #12-658]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 5. Food Safety Violations
35:3-1-5 [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 6-181 et seq., 6-251 et seq., 6-280.1 et seq., and 6-290.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma.
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed new rules establish a fine matrix for violations of food safety laws and rules.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. FINE SCHEDULES

PART 5. FOOD SAFETY VIOLATIONS

35:3-1-5. Violations of certain food safety laws and rules

(a) After notice and opportunity for a hearing in accordance with the Administrative Procedures Act, if the State Board of Agriculture finds any person in violation of the Oklahoma Agricultural Code or any rule promulgated or order issued pursuant thereto, the Board shall have the authority to assess an administrative penalty of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00) for each violation. The following shall be non-exclusive rules of construction or interpretation in the determination of the amount of penalty or fine:

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

(2) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require. Accordingly, in determining a penalty or fine, such penalty or fine may be enhanced or enlarged, including above the range suggested by this penalty matrix, *inter alia*, based upon the affect or potential affect of the alleged violation on the food supply of this state or on the functioning of intrastate commerce in this state.

(3) Nothing shall be construed as requiring the Board to report for prosecution, or for the institution of legal action or injunction proceedings, minor violations of law or rules whenever it believes that the public interest will be adequately served by a suitable written notice of warning, pursuant to 2 O.S. §§ 6-207 (b), 6-208 (b), 6-263, 6-280.15(B), and 6-290.13(B).

(b) The penalty matrix for certain food safety laws and rules is as follows:

(1) Inhumane slaughtering or handling of cattle, bison, sheep, swine, goats, horses, mules and other equines pursuant to 2 O.S. § 6-183 (B) or § 6-190 (b).

(A) First Violation - $100 to $500

(B) Second Violation - $300 to $1,500

(C) Subsequent Violations - $1,000 to $10,000

(2) Sale or offer for sale in intrastate commerce of any meat or meat food products of any cattle, bison, sheep, swine, goat, horse, mule and/or other equine which is capable of use as human food prepared for intrastate commerce under any name or other marking or labeling which

is false or misleading, or in any container of a misleading form or size pursuant to 2 O.S. § 6-187.

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(3) Slaughtering of any cattle, bison, sheep, swine, goats, horses, mules and other equines and/or the preparation of any meat or meat food products which are capable of use as human food for use in intrastate commerce at a facility that is neither inspected under 2 O.S. § 6-185 or exempt therefrom pursuant to 2 O.S. § 6-190 (a).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $2,500 to $10,000

(4) Sale, transportation, offer for sale or transportation, or receipt for transportation in intrastate commerce of any meat or meat food products of any cattle, bison, sheep, swine, goat, horse, mule and/or other equine which is capable of use as human food and which is (i) adulterated or misbranded pursuant to 2 O.S. § 6-190 (c); or (ii) required to be inspected and passed and is not pursuant to 2 O.S. § 6-190 (d); or (iii) prepared in a facility that fails to meet the requirements of the custom processing exemption of OAC 35:37-3-5 and such facility is not an inspected facility under 2 O.S. § 6-190 (d) or exempt.

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $2,500 to $10,000.

(5) Casting, printing, lithographing, or otherwise making any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof or forging any official device, mark, or certificate except as authorized by the Board pursuant to 2 O.S. § 6-191 (a) or (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(6) Use of any official device, mark, or certificate, or simulation thereof, or the alteration, detachment, defacement, or destruction of any official device, mark, or certificate without authorization from the Board pursuant to 2 O.S. § 6-191 (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(7) Failure to use, or to detach, deface, or destroy any official device, mark, or certificate contrary to the regulations prescribed by the Board pursuant to 2 O.S. § 6-191 (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1500
(C) Subsequent Violations - $1,000 to $10,000

(8) Knowingly possessing, without promptly notifying the Board or its representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark pursuant to 2 O.S. § 6-191 (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(9) Knowingly making any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the Board pursuant to 2 O.S. § 6-191 (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(10) Knowingly representing that any meat or meat food products of any cattle, bison, sheep, swine, goat, horse, mule and/or other equine which is capable of use as human food has been inspected and passed, or exempted under the Oklahoma Meat Inspection Act when, in fact, it has not been so inspected and passed, or exempted pursuant to 2 O.S. § 6-191 (b).

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $2,500 to $10,000

(11) Sale, transportation, offer for sale or transportation, or receipt for transportation in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived pursuant to 2 O.S. § 6-192.

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

(12) With respect to facilities that are required to be inspected under 2 O.S. § 6-185, preparing any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof other than in establishments separate from those in which cattle, sheep, swine, or goats are slaughtered or their carcasses, parts thereof, meat or meat food products are prepared pursuant to 2 O.S. § 6-192.

(A) First Violation - $100 to $500
(B) Second Violation - $300 to $1,500
(C) Subsequent Violations - $1,000 to $10,000

[OAR Docket #12-658; filed 5-21-12]

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

[OAR Docket #12-659]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Animal Health Reportable Diseases
35:15-3-2 [AMENDED]
Subchapter 11. Importation of Livestock, Poultry, and Pets

Part 13. Equine Piroplasmosis
35:15-11-52 [AMENDED]
35:15-11-53 [AMENDED]
35:15-11-54 [AMENDED]
35:15-11-55 [AMENDED]
35:15-11-56 [AMENDED]
Subchapter 15. Equine Infectious Anemia (EIA)
Part 7. Requirements for Approved Markets
35:15-15-72 [REVOKED]

AUTHORITY:
Article 6, Section 31, Constitution of the State of Oklahoma; Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 6-1 et seq.

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
The proposed rule changes add and remove reportable diseases, remove certain regulatory and testing burdens on sale untested equidae, add and remove definitions, changes the testing procedures for equine piroplasmosis, and makes several minor grammatical and textual changes.

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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, 2012:

SUBCHAPTER 3. ANIMAL HEALTH REPORTABLE DISEASES

35:15-3-2. Reportable diseases

(a) Multiple species diseases
(1) Anthrax
(2) Aujeszky's disease
(3) Bluetongue
(4) Brucellosis (Brucella abortus)
(5) Brucellosis (Brucella melitensis)
(6) Brucellosis (Brucella suis)
(7) Crimean Congo haemorrhagic fever
(8) Echinococcosis/hydatidosis
(9) Foot and mouth disease
(10) Heartwater
(11) Japanese encephalitis
(12) Leptospirosis
(13) New world screwworm (Cochliomyia hominivorax)
(14) Old world screwworm (Chrysomya bezziana)
(15) Paratuberculosis
(16) Q fever
(17) Rabies
(18) Rift Valley fever
(19) Rinderpest
(20) Trichinellosis
(21) Tularemia
(22) Vesicular stomatitis
(23) West Nile fever

(b) Other diseases
(1) Camelpox
(2) Leishmaniosis

(c) Cattle diseases
(1) Bovine anaplasmosis
(2) Bovine babesiosis
(3) Bovine genital campylobacteriosis
(4) Bovine spongiform encephalopathy
(5) Bovine tuberculosis
(6) Bovine viral diarrhea
(7) Contagious bovine pleuropneumonia
(8) Enzootic bovine leukosis
(9) Haemorrhagic septicaemia
(10) Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis
(11) Lumpky skin disease
(12) Malignant catarrhal fever
(13) Theileriosis
(14) Trichomonosis
(15) Trypanosomosis (tsetse-transmitted)

(d) Sheep and goat diseases
(1) Caprine arthritis/encephalitis
(2) Contagious agalactia
(3) Contagious caprine pleuropneumonia
(4) Enzootic abortion of ewes (ovine chlamydiosis)
(5) Maedi-visna
(6) Nairobi sheep disease
(7) Ovine epididymitis (Brucella ovis)
(8) Peste des petits ruminants
(9) Salmonellosis (S. abortusovis)
(10) Scrapie
(11) Sheep pox and goat pox

(e) Equine diseases
(1) African Horse Sickness
(2) Contagious Equine Metritis
(3) Dourine
(4) Equine Encephalomyelitis (Eastern and Western)
(5) Equine Infectious anaemia
(6) Equine influenza
(7) Equine piroplasmosis
(8) Equine rhinopneumonitis

(9) Equine viral arteritis
(10) Glanders
(11) Surra (Trypanosoma evansi)
(12) Venezuelan equine encephalomyelitis
(13) Strangles (Streptococcus equi)

(f) Swine diseases
(1) African swine fever
(2) Classical Swine Fever
(3) Nipah virus encephalitis
(4) Porcine cysticercosis
(5) Porcine reproductive and respiratory syndrome
(6) Swine vesicular disease
(7) Transmissible gastroenteritis

(g) Avian diseases
(1) Avian chlamydiosis
(2) Avian infectious bronchitis
(3) Avian infectious laryngotracheitis
(4) Avian mycoplasmosis (M. gallisepticum)
(5) Avian mycoplasmosis (M. synoviae)
(6) Duck virus hepatitis
(7) Fowl cholera
(8) Fowl typhoid
(9) ~~Highly pathogenic avian influenza and low pathogenic avian influenza in poultry as per Chapter 2.7.12. of the Terrestrial Animal Health Code~~Avian influenza
(10) Infectious bursal disease (Gumboro disease)
(11) Marek's disease
(12) Newcastle disease
(13) Pullorum disease
(14) Turkey rhinotracheitis

(h) Cervidae diseases - Chronic Wasting Disease (CWD)

(i) Lagomorph diseases
(1) Myxomatosis
(2) Rabbit haemorrhagic disease

(j) Fish diseases
(1) Epizootic haematopoietic necrosis
(2) Infectious haematopoietic necrosis
(3) Spring viraemia of carp
(4) Viral haemorrhagic septicaemia
(5) Infectious pancreatic necrosis
(6) Infectious salmon anaemia
(7) Epizootic ulcerative syndrome
(8) Bacterial kidney disease (Renibacterium salmoninarum)
(9) Gyrodactylosis (Gyrodactylus salaris)
(10) Red sea bream iridoviral disease

(k) Crustacean diseases
(1) Taura syndrome
(2) White spot disease
(3) Yellowhead disease
(4) Tetrahedral baculovirosis (Baculovirus penaei)
(5) Spherical baculovirosis (Penaeus monodon-type baculovirus)
(6) Infectious hypodermal and haematopoietic necrosis
(7) Crayfish plague (Aphanomyces astaci)

(l) Bee diseases
(1) Acarapisosis of honey bees
(2) American foulbrood of honey bees
(3) European foulbrood of honey bees
(4) Small hive beetle infestation (Aethina tumida)
(5) Tropilaelaps infestation of honey bees
(6) Varroosis of honey bees

(m) Mollusc diseases
(1) Infection with Bonamia ostreae
(2) Infection with Bonamia exitiosa
(3) Infection with Marteilia refringens
(4) Infection with Mikrocytos mackini
(5) Infection with Perkinsus marinus
(6) Infection with Perkinsus olseni
(7) Infection with Xenohaliotis californiensis

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 13. EQUINE PIROPLASMOSIS

35:15-11-52. Definitions

The following words and phrases shall have the following meanings:

~~**"Confirmed positive case"** means an equid that has tested positive for Equine Piroplasmosis by the National Veterinary Services Laboratories (NVSL) with either a complement fixation (CF) test or a competitive enzyme linked immunosorbent assay (c-ELISA). An equid may be classified as a confirmed positive case without showing evidence of clinical disease.~~

"Equine Piroplasmosis reactor" means any ~~equid~~ Equidae that tests positive for Equine Piroplasmosis from either B. caballi or T. equi but has not been confirmed by NVSL.

~~**"Exposed equids"** means all equids in the same herd or group as an Equine Piroplasmosis positive equid or that have had recent direct and sustained contact with a positive equid, as determined by the State Veterinarian.~~

"Exposed" means all Equidae in the same herd as a Prioplasmosis positive animal or had recent direct and sustained contact with a Piroplasmosis animal.

"High risk premises" means premises where transmission of Equine Piroplasmosis is known or suspected to have occurred or has the potential to occur, through either natural tick borne transmission or high risk management practices and as determined by the State Veterinarian.

"Low risk premises" means premises where transmission of Equine Piroplasmosis has not been demonstrated or suspected to have occurred and has a low potential to occur, through either natural tick borne transmission or management practices and as determine by the State Veterinarian risk.

"Negative Equidae" means Equidae that show a negative result to a competitive enzyme-linked immunosorbent assay (c-ELISA) test for Equine Piroplasmosis or have been classified negative by the designated epidemiologist, based on history, supplemental tests, or other epidemiological evidence.

"Positive Equidae" means Equidae that show a positive result to for Equine Piroplasmosis by the National Veterinary Services Laboratories (NVSL) on the complement fixation

(CF) test or competitive enzyme-linked immunosorbent assay (c-ELISA) test.

"Suspect case" means an ~~equid~~ Equidae with clinical signs consistent with Equine Piroplasmosis, a history of exposure, or an inconclusive test.

35:15-11-53. Testing for Equine Piroplasmosis ~~equids~~

(a) All official samples collected from Equidae for Piroplasmosis testing shall be collected by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board. Samples shall be submitted to an approved lab within 30 days of collection.

(1) The State Veterinarian, a state or federal veterinarian, an authorized agent of the Board, or an accredited veterinarian acting under authority of the State Veterinarian may cause an official test to be conducted on any Equidae known or suspected to be infected with or exposed to Piroplasmosis.

(2) If the owner refuses or neglects to comply with the testing requirements, the Equidae shall be quarantined and the movement of any Equidae from the premises shall be prohibited.

(3) The State Veterinarian may provide and require supervision for collection of test samples submitted by an accredited veterinarian.

(4) Any person providing erroneous or fictitious information shall be in violation of these rules.

(5) Any person altering, defacing, or falsifying information on a test chart, permit, certificate of veterinary inspection, or any form associated with the Piroplasmosis program shall be in violation of these rules.

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

(1) Test results for suspect cases and reactor ~~equids~~ Equidae shall be confirmed by NVSL ~~and confirmed positive equids shall be isolated from other animals immediately~~.

~~(b) All exposed equids shall be tested for Equine Piroplasmosis.~~

(~~1~~2) Positive results shall be confirmed by NVSL.

(~~2~~3) ~~Equids~~Exposed Equidae that test negative shall be retested at least thirty (30) calendar days from last exposure to a ~~positive equid~~ Positive Equidae ~~and shall not be released from quarantine until obtaining a negative test a minimum of thirty (30) calendar days from the last exposure. The equid may be tested more frequently during the thirty (30) calendar day period at the discretion of the State Veterinarian~~.

~~(3) Any other epidemiologically linked equids shall be tested, including but not limited to those in possible source herds, those traced out of herds with positive equids, and those deemed necessary by the State Veterinarian.~~

~~(4) If an exposed equid remains negative on retest, it may be considered a nonreactor or test negative equid.~~

(4) Epidemiologic data may be considered in the testing requirements for Exposed Equidae and affected herds.

(c) Release of quarantine.

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

(2) Exposed Equidae may be released from quarantine after obtaining a negative test a minimum of thirty (30) calendar days from the last exposure.

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

(~~c~~d) Foals born to positive mares are considered exposed and shall be tested because Equine Piroplasmosis hemoparasites may be transmitted in utero or at parturition.

(1) Foals under six (6) months of age may carry maternal antibodies to infection but may not be infected. Therefore, seropositive foals without other evidence of infection via PCR or blood smears shall be retested after waning of maternal antibodies.

(2) Foals shall be kept in quarantine until weaned or separated from the mare and until tested negative for Equine Piroplasmosis (at a minimum of six (6) months of age) at NVSL.

35:15-11-54. Management and disposition of ~~positive equids~~ Positive Equidae

(a) Any ~~equid~~ Equidae confirmed positive for Equine Piroplasmosis shall be officially identified by the Department or regulatory personnel acting under the authority of the State Veterinarian, unless already electronically identified.

(b) Options for managing ~~positive equids~~ Positive Equidae include quarantine, quarantine with treatment, export, and euthanasia. Conditions for quarantine shall be outlined in a compliance agreement established between the owner and the State Veterinarian. Standards for quarantine shall differ for high risk and low risk premises.

(c) Management of ~~positive equids~~ Positive Equidae shall be conducted under the direct supervision of the State Veterinarian.

(1) Quarantine on high risk premises:

(A) Positive ~~equids~~ Equidae shall be housed in a tick free facility on any premises approved by the State Veterinarian.

(B) If no tick free facility is available, the ~~positive equids~~ Positive Equidae shall be housed at a predetermined safe distance from other ~~equids~~ Equidae. The State Veterinarian shall determine the predetermined distance with the goal of reducing the risk of tick borne transmission and shall take into account tick species in the area, natural geographical barriers, seasonal variation, the potential role of wildlife in tick movement, and other factors.

(C) A tick free facility may be of any size but shall be surrounded by two (2) fences a minimum of thirty (30) feet apart, with the zone between the fences free of vegetation and animals.

(D) Prior to moving ~~positive equids~~ Positive Equidae into a facility, the ~~equids~~ Equidae, the facility, and the thirty (30) foot barrier zone shall be treated to eliminate ticks using an approved acaricide.

(i) Positive ~~equids~~ Equidae shall be maintained on a fourteen (14) to eighteen (18) day acaricide treatment interval to minimize tick infestations.

(ii) Acaricides used shall be labeled as effective against ~~ticks (e.g., a synthetic pyrethroid such as ten percent (10% permethrin),~~ and approved for use on ~~equids~~ Equidae or on the environment (i.e., pasture, stall, soil, etc.)~~, and registered in the State of Oklahoma~~.

~~(iii) Owners and premises personnel shall obtain a private applicator's license prior to treating equids.~~

(E) Unless approved by the State Veterinarian, only positive ~~equids~~ Equidae are allowed in the tick-free facility. Dogs, other domestic animals, or livestock shall not be allowed to enter the facility unless maintained on acaricide treatment and remain tick free at all times.

(F) Facility inspections shall be conducted pursuant to the following schedule:

(i) The State Veterinarian shall make at least two (2) unannounced inspections of the facility within the first sixty (60) calendar days of quarantine to ensure no unauthorized animals are moving to or from the facility, the thirty (30) foot zone is free of vegetation and animals, and the ~~positive equids~~ Positive Equidae are not tick infested.

(ii) During the first year of quarantine, premises shall be inspected at least quarterly, or more frequently as determined by the State Veterinarian, to assess compliance. At least one of these inspections shall be unannounced.

(iii) After the first year of quarantine, there shall be a minimum of two (2) intensive premises inspections per year for premises that repeatedly demonstrate complete compliance. These inspections may be scheduled or unannounced at the discretion of the State Veterinarian.

(iv) Frequency of inspections shall be increased in cases where the State Veterinarian has identified the potential for noncompliance.

(G) Working, exercising, or allowing other contact between ~~positive and negative equids~~ Positive and Negative Equidae shall not be allowed except in the following circumstances:

(i) Any contact with other animals shall only occur on the quarantined premises.

(ii) Both ~~positive and negative equids~~ Positive and Negative Equidae shall be treated with an approved acaricide not less than twenty four (24) hours and not more than fourteen (14) days prior to any contact.

(iii) ~~Equids~~Equidae shall not be left unattended in pastures. When acaricide treated ~~positive equids~~ Positive Equidae are not being ridden, they shall be placed in a trailer or kept a minimum of ten (10) feet from acaricide treated ~~negative equids~~ Negative Equidae.

(iv) Trailers used to transport ~~positive equids~~ Positive Equidae within the quarantined premises shall be treated with acaricide after each use.

(v) Premises where ~~positive and negative equids~~ Positive and Negative Equidae have any contact shall be subject to more frequent inspections by the State Veterinarian.

(2) Quarantine on low risk premises:

(A) Positive ~~equids~~ Equidae shall be housed in separate pens or pastures away from ~~negative equids~~ Negative Equidae.

(i) There shall be a minimum ten (10) foot separation maintained between ~~positive equids~~ Positive Equidae and ~~negative equids~~ Negative Equidae on the same or adjacent low risk premises, with vegetation kept no higher than four (4) inches tall in the intervening space.

(ii) If the ten (10) foot separation is not possible due to facility size or other limiting factors, the State Veterinarian shall evaluate the facilities on a case-by-case basis to determine if sufficient space and barriers are available to establish and maintain the necessary isolation of ~~positive equids~~ Positive Equidae.

(B) Inspections shall occur on the same schedule as for ~~positive equids~~ Positive Equidae quarantined on high risk premises.

(3) Quarantine and enrollment in an approved Equine Piroplasmosis treatment research program shall be available upon the approval of the State Veterinarian.

(A) Any associated costs for an approved Equine Piroplasmosis treatment research program shall be the owner's responsibility.

(B) Management of ~~positive equids~~ Positive Equidae enrolled in an approved Equine Piroplasmosis treatment program shall be in accordance with the standards specified in this section.

(C) If an ~~equid~~ Equidae completes an approved treatment research program, effectively demonstrates freedom from the organism, and no longer meets the confirmed positive case definition for Equine Piroplasmosis, the ~~equid~~ Equidae may be eligible for quarantine release at the discretion of the State Veterinarian.

(4) ~~An owner of an Equine Piroplasmosis positive equid to any other country shall be coordinated with authorities in the destination country to arrange for standards and transportation.~~It shall be the owner's responsibility to coordinate with authorities in the destination country for the export of an Equine Piroplasmosis Positive Equidae and to arrange for transportation. The ~~positive equid~~ Positive Equidae shall be transported to the export facility under an APHIS movement permit and official seal.

(5) Euthanasia and disposal:

(A) Both euthanasia and disposal shall be documented and conducted pursuant to the supervision of the State Veterinarian.

(B) Federal and State indemnity shall not be available.

35:15-11-55. Release and removal options for ~~exposed equids~~ Exposed Equidae

(a) On high risk premises where ~~positive equids~~ Positive Equidae remain, ~~exposed~~ equids Exposed Equidae may be released from quarantine and removed from the premises under the following conditions:

(1) NVSL tests the ~~exposed equids~~ Exposed Equidae and determines they are negative.

(2) The ~~negative equids~~ Negative Equidae are treated for ticks using an approved acaricide.

(3) Exposed ~~equids~~ Equidae are confined to a negative equine facility (e.g., pen, paddock, stall):

(A) The negative facility shall contain no vegetation and shall have been treated with an approved acaricide;

(B) The facility is surrounded by two fences a minimum of thirty (30) feet apart with a zone free of vegetation between the fences or barriers;

(C) The thirty (30) foot zone around the facility is kept free of vegetation and treated with an acaricide approved for treating facilities to eliminate ticks. Treatments shall be repeated as often as necessary according to label instructions to maintain a zone with no ticks. If thirty (30) feet of separation is not possible, the State Veterinarian shall evaluate the facilities on a case-by-case basis to determine whether sufficient space and barriers are available for isolating the ~~negative equids~~ Negative Equidae; and

(D) No equipment, tack, hay, feed, bedding, manure, clothing, or other items have been brought into the negative facility from any ~~positive equid~~ Positive Equidae premises.

(4) After the animals are confined, they are retreated with an acaricide at fourteen (14) to eighteen (18) day intervals.

(5) The ~~negative equids~~ Negative Equidae are inspected for ticks ("scratched") and retested by the NVSL not less than thirty (30) days following entry into the negative equine facility. Exposed ~~equids~~ Equidae that are negative on the retest and free of ticks may be released from the quarantine if treated with an approved acaricide and removed from the premises while still wet with the acaricide.

(6) Dogs, other domestic animals, or livestock that have access to a negative equine facility shall be treated to prevent tick transmission to the facility.

(b) After all ~~positive equids~~ Positive Equidae have been removed from high risk premises, the remaining ~~equids~~ Equidae may be released from quarantine through the following process based on the presence of vegetation on the premises:

(1) Premises with no vegetation:

(A) After all ~~positive equids~~ Positive Equidae leave the premises, the ~~negative equids~~ Negative Equidae shall be treated for ticks using an approved acaricide.

(B) Treat the premises with an approved acaricide.

(C) Retest the negative ~~exposed equids~~ Exposed Equidae at NVSL no less than thirty (30) days after removing the ~~positive equids~~ Positive Equidae.

(D) If the ~~equids~~ Equidae are negative on the retest, the quarantine may be released by the State Veterinarian.

(2) Premises with vegetation:

(A) After all ~~positive equids~~ Positive Equidae leave the premises, the ~~negative equids~~ Negative Equidae shall be treated for ticks using an approved acaricide.

(B) The vegetation shall be mowed to less than four (4) inches, residual grass clippings shall be removed, and the premises shall be treated with a registered acaricide effective against ticks and approved for grazing pastures. While spraying pastures, animals shall be kept in stalls, sheds, trailers, or other areas until the forage is safe for ingestion, per acaricide label directions.

(C) The ~~negative exposed equids~~ Negative Exposed Equidae shall be retested by NVSL no less than thirty (30) days after removing ~~positive equids~~ Positive Equidae.

(D) If the ~~equids~~ Equidae are negative on the retest, the quarantine may be released by the State Veterinarian.

(E) If premises are too large to treat all vegetation, the ~~equids~~ Equidae may be kept on the premises under quarantine until they test negative at least twelve (12) months after removing the ~~positive equids~~ Positive Equidae. During that twelve (12) month period, the ~~equids~~ Equidae may attend functions off premises if they test negative within thirty (30) days prior to the function and are treated with an approved acaricide within seventy two (72) hours of movement. The ~~equids~~ Equidae shall be returned to the premises within ten (10) days of their departure.

(F) Dates of treatment shall be recorded on a treatment record maintained by the owner.

(G) The State Veterinarian shall review records regularly for the duration of the quarantine period.

(c) Exposed ~~equids~~ Equidae on low risk premises may be released from quarantine order under the following conditions:

(1) NVSL tests the ~~exposed equids~~ Exposed Equidae and finds them negative for Equine Piroplasmosis.

(2) Negative ~~equids~~ Equidae on the premises or adjacent premises are separated from ~~positive equids~~ Positive Equidae by a minimum of ten (10) feet, with vegetation kept below four (4) inches tall in the intervening space.

(3) If ten (10) feet of separation is not possible due to facility size or other limiting factors, the State Veterinarian shall evaluate the facilities on a case-by-case basis to determine whether sufficient space is available to isolate ~~positive equids~~ Positive Equidae.

(4) At the time they are tested, all ~~equids~~ Equidae shall undergo an initial treatment for ticks with an approved acaricide.

(5) Negative ~~equids~~ Equidae shall be retreated fourteen (14) to eighteen (18) days following initial treatment, according to product label instructions, and kept free of ticks until retested.

(6) Negative ~~equids~~ Equidae shall be inspected for ticks (scratched) and retested negative by NVSL not less than thirty (30) days following the initial treatment and separation from ~~positive equids~~ Positive Equidae.

(7) If ~~exposed equids~~ Exposed Equidae are removed from the premises within thirty (30) days of a verified negative status (i.e., the releasing test) and within fourteen (14) days of a treatment, no additional testing or treatment shall be required.

(8) If the State Veterinarian identifies possible pasture contamination after removal of a ~~positive animal~~ Positive Equidae, the following steps shall be taken for twelve (12) months after removal:

(A) Apply an acaricide treatment each time the ~~negative equid~~ Negative Equidae is moved from the premises;

(B) Within thirty (30) days prior to movement, retest the ~~negative exposed equids~~ Negative Exposed Equidae, and confirm their negative status; and

(C) Conduct a final negative test at the end of the twelve (12) month period for all remaining ~~negative exposed equids~~ Negative Exposed Equidae.

(9) If a ~~negative exposed equid~~ Negative Exposed Equidae on a low risk premises subsequently tests positive for Equine Piroplasmosis, the classification of the premises shall be reevaluated by the State Veterinarian. Epidemiological evidence of disease transmission shall elevate the classification of the premises to high risk.

35:15-11-56. Long term maintenance of ~~negative exposed equids~~ Negative Exposed Equidae

(a) On premises where ~~negative and positive equids~~ Negative and Positive Equidae remain long term, management practices shall minimize the risk of Equine Piroplasmosis transmission.

(b) Long term maintenance of ~~negative exposed equids~~ Negative Exposed Equidae on high risk premises that have ~~positive equids~~ Positive Equidae shall meet the following:

(1) The owner shall complete all requirements found in these rules, except instead of confining the ~~negative equines~~ Negative Equidae to a prescribed facility, the ~~positive equids~~ Positive Equidae shall be confined to an enclosure with the same restrictions and requirements.

(2) The ~~negative equids~~ Negative Equidae shall be retested for Equine Piroplasmosis annually and within thirty (30) days prior to any movement from the premises or change of ownership.

(3) Immediately prior to moving any ~~negative equids~~ Negative Equidae, the State Veterinarian shall inspect (scratch) the ~~negative equids~~ Negative Equidae for ticks and require treatment of the ~~equids~~ Equidae with an approved acaricide. The animals shall not be moved unless the inspection reveals no ticks and the animals move off the premises while still wet with acaricide.

(c) Long term maintenance of ~~negative exposed equids~~ Negative Exposed Equidae on low risk premises that have ~~positive equids~~ Positive Equidae shall comply with the following:

(1) Negative and ~~positive equids~~ Positive Equidae shall be kept separated.

(2) Negative ~~equids~~ Equidae shall be retested and found negative within thirty (30) days prior to movement off the premises.

(3) The owner shall treat ~~negative equids~~ Negative Equidae with an approved acaricide not less than twenty four (24) hours and not more than fourteen (14) days prior to moving them from the premises.

~~(4) Owners and premises personnel shall obtain a private applicator's license prior to treating equids.~~

(~~5~~4) Dates of acaricide treatment shall recorded on a treatment record maintained by the owner.

(~~6~~5) Negative ~~exposed equids~~ Exposed Equidae shall receive annual retests as long as ~~positive equids~~ Positive Equidae remain on the premises.

(~~7~~6) If a ~~negative exposed equid~~ Negative Exposed Equidae on a low risk premises subsequently tests positive for Equine Piroplasmosis, the classification of the premises shall be reevaluated by the State Veterinarian. Epidemiological evidence of disease transmission shall elevate the classification of the premises to high risk.

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 7. REQUIREMENTS FOR APPROVED MARKETS

35:15-15-72. Identification of untested Equidae [REVOKED]

~~(a) All untested Equidae offered for sale at approved markets shall be released from the sale premise and consigned to an approved slaughter establishment on a VS Form 1-27, issued by an accredited veterinarian or authorized agent of the Board showing the sex, age, color, and markings sufficient to positively identify each animal.~~

~~(b) If no accredited veterinarian or authorized agent of the Board is available for proper identification, testing, inspection, and release of Equidae at the approved auction market, all Equidae offered for sale shall be quarantined to the market facility until an accredited veterinarian or authorized agent of the Board is available.~~

[OAR Docket #12-659; filed 5-21-12]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 17. WATER QUALITY

[OAR Docket #12-660]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Swine Feeding Operations
35:17-3-6 [AMENDED]
35:17-3-11 [AMENDED]
35:17-3-13 [AMENDED]
35:17-3-14 [AMENDED]
35:17-3-25 [AMENDED]
AUTHORITY:
Article 6, Section 31, Constitution of the State of Oklahoma; Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 2A-1, 2A-22, et seq.
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INCORPORATIONS BY REFERENCE:
Incorporated standards:
American Society for Testing and Materials (ASTM) standards:
ASTM D 698
ASTM D 4318
ASTM D 5084
United States Department of Agriculture Natural Resources Conservation Service (NRCS) standard - Nutrient Management Conservation Practice Standard Code 590
Incorporating rules:
35:17-3-6
35:17-3-11
35:17-3-13
35:17-3-14
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152, (405) 522-5803.
ANALYSIS:
The proposed amendments include minor corrections and additions to citations of reference materials, add technical specifications and reporting requirements for the construction and maintenance of waste retention structures, and revise and standardize certain testing and remediation processes.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 3. SWINE FEEDING OPERATIONS

35:17-3-6. License application for new facilities or expanding operations

(a) In addition to the items required by the Oklahoma Swine Feeding Operations Act, the application for a swine feeding operation license of a new facility or an expanding operation shall contain, as a minimum, the following information:

(1) Name and address of the owner of the facility.

(2) Name and address of the swine feeding operation, including driving directions from the nearest municipality and legal description of the facility.

(3) Name and address of the operator if other than the owner.

(4) Capacity in swine animal units and number and type of swine housed or confined.

(5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.

(6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.

(7) Environmental history of the past three (3) years of any swine feeding operation or CAFO established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of a swine feeding operation.

(8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.

(9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include a map of all property owners within two (2) miles of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence. Applications for LMFOs with more than two thousand (2,000) swine animal units shall include the location and distance of all occupied residences within two (2) miles of the facility and waste retention structures.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) All LMFOs shall submit an affidavit certifying compliance with applicable setbacks found in Sections 20-19 and 20-21 of Title 2 of the Oklahoma Statutes.

(13) If applicable, a copy of the written waiver by a property owner releasing specified setback requirements as provided by the Act.

(14) To assist the Department, applications for LMFOs shall include an introductory narrative summary describing the facility and operation. The description shall include the following general information:

(A) Both narrative and legal location of the facility, including driving directions.

(B) The type of operation, including whether a BGF, nursery, finisher, or other type.

(C) The type and number of swine planned for the facility.

(D) The planned swine waste management system and structures.

(E) A general narrative description of planned swine growth and movement activities.

(F) Other general information the owner believes to be helpful to the Department in beginning review of the application.

(15) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites. Applications for LMFOs shall indicate all manmade terracing and other changes to the topography of the site.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites. Applications for LMFOs shall provide a description of soil resources including soil survey information of the licensed area containing the following:

(i) A map delineating different soil types on a scaled serial photograph.

(ii) Location of all soil sampling sites.

(iii) Soil description of all soils used for land application pursuant to USDA description.

(iv) An assessment of suitability of the soil for land application purposes. The assessment shall be certified by a Professional Engineer registered in the State of Oklahoma.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(D) Applications for LMFOs shall provide a description of existing land uses and land use classification pursuant to local law or ordinance, if any, of the proposed license area and adjacent areas. The burden shall be upon the owner to comply with local and use law and ordinances.

(E) Applications for LMFOs shall provide a description of geologic information, including at a minimum:

(i) The geology of the proposed license area down to and including the first aquifer, but not more than one hundred (100) feet below the bottom of the waste retention structure.

(ii) Geological information based on published geological literature and subsurface investigation otherwise required for the license application, including lithology from water wells on site and seismicity information. Geologic information may be provided by an agency review of the project performed by the Oklahoma Geological Survey and provided to the Department with the license application.

(F) Applications for LMFOs shall include a description of water resources, including the following:

(i) Quality of surface water resources.

(I) Identification of all surface waters of the state within a three (3) mile distance of the waste retention structure as identified on a current USGS 7.5 minute topographic map.

(II) Location, name, and description of all surface water bodies identified in (I) including streams, lakes, discharges, and impoundments within the three (3) mile radius.

(III) Beneficial uses, limitations, and remarks of all listed streams in the drainage area of the facility as listed in Appendix A of Chapter 45 of Title 785 of the Oklahoma Administrative Code.

(ii) Quality of groundwater resources.

(I) An inventory of all existing and abandoned wells, springs, and known or reasonably discoverable test holes.

(II) Groundwater description shall include a measurement of seasonal static water levels, direction of flow, and delineation of recharge areas pursuant to the Oklahoma Water Resources Board or other agency's data.

(III) Baseline sampling for groundwaters accessible at the facility shall include electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(G) Applications for LMFOs shall include a description of the climatological factors that are representative of the proposed license area and adjacent areas as available from published sources, including average seasonal precipitation, average direction and velocity of prevailing winds, seasonal temperature changes, average evaporation rate, and other information requested by the Department.

(H) Applications for LMFOs shall include a map delineating existing vegetation types and a description of the plant communities within the proposed permit area and adjacent areas pursuant to information available from the Oklahoma Biological Survey.

(I) Applications for LMFOs shall include a description of fish and wildlife resources information for the license area and adjacent areas. The scope and level of detail to be provided may be expanded by the Department in consultation with State and Federal agencies with responsibility for fish and wildlife propagation. Site specific information necessary to address the respective species shall be required when the license area or adjacent areas are likely to include ~~endangered~~endangered or threatened species of plants or animals or their critical habitat.

(J) Applications for LMFOs shall include an identification and description of cultural and historical resources listed on the National Register and known archeological features as found in the Oklahoma Archeological Survey and Oklahoma State Historic Preservation Society of those located within the proposed license area.

(16) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction testbased on ASTM D 698 procedure.

(iii) Perform Atterberg limits test per ASTM standards (ASTM D 4318).

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM ~~D 5084~~D 5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(vi) Applications for LMFOs shall include the basis for estimating available volume of soil (ft^3) to be used in the soil liner. Estimated values shall be verified in the field during construction.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(E) Where required by the Oklahoma Water Resources Board, all applications for LMFOs shall include a copy of a properly prepared Multi-Purpose Completion Form as submitted to the Oklahoma Water Resources Board for all soils investigation.

(17) All applications for LMFOs shall provide documentation relating to and verifying that a minimum ten (10) foot separation exists between the bottom of each waste retention structure and the highest annual or seasonal level of groundwater elevation at the waste retention structure site based on all data available, including the perched water table and regional water table or aquifer. The perched water table shall include all local zones of saturation above the regional water table.

(A) Documentation of a ten (10) foot separation shall be established by submission of a soil log from a soil boring extending a minimum of ten (10) feet below the bottom of all waste retention structures to ascertain the presence of groundwater or bedrock.

(B) Documentation containing a statement from a Professional Engineer registered in the state of Oklahoma certifying existence of the ten (10) foot separation distance.

(18) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site. Applications for LMFOs shall, at a minimum, include analysis of soils for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen. Additional parameters may be required upon request of the Department. A map showing the location of each soil sample shall be provided. All soil sampling at LMFOs shall be performed pursuant to one of the following procedures:

(i) Soil sampling shall be conducted using Oklahoma State University Fact Sheet #PT 97-37 and F-2207, or current equivalents.

(ii) A total of thirteen (13) soil samples shall be collected from each forty (40) acre land application area, one sample from each corner of a six hundred and sixty (660) foot or ten (10) acre grid, with one sample from the center of each grid. One single composite soil sample may be prepared for analysis if the proposed land application area is dominated by one soil type. Where land application is achieved by center pivot irrigation, only those grid points within the application area shall be sampled.

(19) A Pollution Prevention Plan (PPP) which contains a Swine Waste Management Plan, a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs). Applications for LMFOs shall also include an Odor Abatement Plan (OAP), a Pest Management Plan (PMP), and any other plan required by the Department.

(20) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the swine feeding operation.

(21) All applications for LMFOs shall include a closure plan pursuant to OAR 35:17-3-25.

(22) A financial statement declaring the financial ability of an owner to operate a swine feeding operation with a liquid waste management system in order to comply with the ~~surely~~ surety requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(23) A notarized certification signed by the person applying for a license, which states: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(24) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans providing a minimum of a ten (10) foot separation between the bottom of each liquid waste retention structure and the highest annual or seasonal elevation of groundwater for LMFOs and any other information required by the Department directly related to the construction, installation, or future modification or operation of a swine feeding operation.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

(c) All supporting documentation regarding methods used for preparing the license application for an LMFO, including calculation of waste retention structure capacity and land application rates, shall be based on published methods approved by the Department. Any other methods shall be used only upon approval by the Department prior to submission of the license application.

(d) A change in location of a waste retention structure for an LMFO after the initial application date shall result in a new application date assigned to that application and all requirements in effect at the new application date shall apply, including setbacks. A reconfiguration of barns or waste retention structures shall not be considered a change, but a new presite approval shall be obtained prior to the change. If the change in location is required by the Department, the initial application date continues to apply.

(e) Adjacent areas for purposes of the LMFO application review shall include all property within one (1) mile of the facility, or two (2) miles if the facility is an LMFO with a capacity of more than two thousand (2,000) animal units.

35:17-3-11. Pollution Prevention Plan (PPP)

(a) Prior to the submission of a CAFO license application, each facility shall develop a Pollution Prevention Plan (PPP) according to the Oklahoma Swine Feeding Operations Act and rules promulgated pursuant to the Act. The Plan shall include provisions for documentation of structural controls, documentation of operating Best Management Practices (BMPs), a Swine Waste Management Plan, a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions. The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP. The PPP for an LMFO shall also include an Odor Abatement Plan (OAP) and a Pest Management Plan (PMP).

(b) Equivalent measures contained in a site specific swine waste management plan prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(c) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(d) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(e) In addition to the requirements of the Act, the PPP shall include:

(1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.

(2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall sample groundwater annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory or State operated laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner. Owners of LMFOs shall perform soil tests for electrical conductivity, pH, nitrate-nitrogen, ammonium-nitrogen, organic matter, sodium, potassium, calcium, magnesium, available phosphorus, and total nitrogen.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. All owners of LMFOs shall sample waste retention structure contents annually prior to the first land application of the calendar year. Owners of LMFOs shall sample waste retention structure contents for ammonium-nitrogen, nitrate-nitrogen, total phosphorus, electrical conductivity, pH, sodium, potassium, calcium, magnesium, total nitrogen, and total solids. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention structure and a log of the findings of the inspections shall be maintained at the site.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. All waste retention structures for LMFOs shall be designed for the maximum number of swine that are or will be licensed at the facility. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than~~ twenty-one (21)~~one-hundred-eighty (180) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. ~~All waste retention structures designed for LMFOs shall have a capacity for all waste and process generated wastewater produced during a period of time not less than one hundred and eighty (180) calendar days.~~

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

(viii) A water budget based on real monthly or daily data from a rain gauge located near the facility.

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and ± 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.

(iii) Each lift of the embankment of the retention structures shall be checked to ensure proper

compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:

(I) project name,
(II) date,
(III) test method used,
(IV) site name,
(V) technician name,
(VI) location of reading, including sketch, if necessary,
(VII) percent compaction,
(VIII) wet density, pcf,
(IX) dry density, pcf,
(X) moisture content,
(XI) lift number, and
(XII) soils lab name, report number and proctor test results used to obtain field measurements.

(iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(~~iii~~v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(~~iv~~vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(~~v~~vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(~~vi~~viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(6) All owners of LMFOs shall install a leak detection system or monitoring wells in accordance with criteria approved by the Department.

(A) Samples of groundwater shall be collected by the Oklahoma Department of Agriculture, Food, and Forestry at least annually. The analysis of the water samples shall be performed by a qualified environmental laboratory approved by the Oklahoma Department of Environmental Quality or the relevant certification agency for the state in which the laboratory is located and approved by the Oklahoma Department of Agriculture, Food, and Forestry. All costs of analysis shall be the responsibility of the owner of the LMFO.

(i) The frequency of sampling may be reduced to once every three (3) years for those monitoring wells which have been sampled for at least three (3) consecutive years and have always been found to be dry.

(ii) If any subsequent sampling event indicates the monitoring well is no longer dry, that monitoring well shall be sampled pursuant to this subsection.

(B) All waste retention structures shall have sufficient numbers of groundwater monitoring wells upgradient and downgradient in the direction of groundwater flow. All monitoring well locations shall be approved by the Department on a case by case basis.

(C) No monitoring well shall be installed more than one hundred and fifty (150) feet from the crown of the outer berm.

(D) All new monitoring wells shall be drilled through the first aquifer encountered, but need not extend more than fifty (50) feet below the bottom of the waste retention structure. One downgradient monitoring well shall be drilled to the first aquifer encountered or the first impermeable layer, but need not extend more than one hundred (100) feet below the bottom of the waste retention structure.

(E) All monitoring wells shall be drilled and completed by an Oklahoma Water Resources Board licensed monitoring well driller.

(F) If no groundwater is encountered during the drilling operation, the bore hole shall be left open for at least forty eight (48) hours but not over thirty (30) days for the aquifer to recharge the bore hole. Thereafter, the bore hole shall be either developed into a monitoring well or plugged according to Oklahoma Water Resources Board requirements.

(G) All new monitoring wells shall meet the following minimum requirements:

(i) A minimum of two (2) inch diameter PVC casing shall be used with a sealing cap on the bottom.

(ii) The casing shall consist of minimum SDR-21 rated casing with a minimum SDR-21 rated factory screen in the saturated zone, or the bottom ten (10) feet if no groundwater is encountered.

(iii) Perforated zone shall be gravel or sand packed originating at the bottom of the screen and extending to two (2) feet above the top of the screen, and otherwise as appropriate for the installation.

(iv) Bentonite shall be placed in the annular space of the well above the gravel or sand pack

for an interval of at least two (2) feet to form an impermeable seal.

(v) A cement grout or a mixture of bentonite and cement shall be placed above the bentonite seal to prevent seepage from entering behind the pipe and causing hydrologic connection.

(vi) At least the top ten (10) feet of the annular space shall be filled with type A cement.

(vii) A concrete apron, minimum of four (4) inch thickness and two (2) feet from the casing shall be installed at the surface to prevent seepage of rain water into the bore hole. The apron shall be sloping away from the casing to avoid percolation of rain water.

(viii) A lockable protective cap shall be placed on top of the casing, which shall be a metal protective casing extending two (2) feet above the concrete apron and one (1) foot into the apron. The well shall remain securely capped and locked at all times, except during sampling events.

(ix) Within thirty (30) days of installation, a copy of the Oklahoma Water Resources Board approved Multi-Purpose Completion Form shall be submitted to the Department.

(x) Existing monitoring wells shall be evaluated on a case by case basis by the Department to determine equivalency. Monitoring wells previously required and approved by the Department shall be considered equivalent.

(H) Groundwater monitoring wells shall be sampled at least annually for electrical conductivity, pH, ammonium-nitrogen, nitrate-nitrogen, total phosphorus, and fecal coliform bacteria.

(I) Owners of LMFOs may install a leak detection system instead of monitoring wells. The system shall be approved by the Department on a case by case basis.

(7) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years. Owners of LMFOs shall retain the records on site for as long as the facility is in operation.

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Other specific information required by the Department.

(8) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable.

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.

(C) Other records as required by the Department.

35:17-3-13. Criteria for liners

(a) Soil liners shall be constructed to meet the following minimum requirements:

(1) Constructed in lifts or layers no more than six (6) inches thick when compacted.

(~~i~~A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.

(~~ii~~B) All side slopes and the floor of the retention structures shall be checked after each lift to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:

(~~I~~i) Project name.

(~~II~~ii) Date.

(~~III~~iii) Test method used per ASTM specification.

(~~IV~~iv) Site name.

(~~V~~v) Technician name.

(~~VI~~vi) Location of reading, include sketch.

(~~VII~~vii) Percent compaction

(~~VIII~~viii) Wet density in pounds per cubic foot (pcf).

(~~IX~~ix) Dry density in pounds per cubic foot (pcf).

(~~X~~x) Moisture content, percent.

(~~XI~~xi) Lift number.

(~~XII~~xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.

(2) Compaction to a minimum of ninety-five percent (95%) of Standard Proctor (ASTM ~~D 698~~D 698) at optimum or wetter moisture content.

(3) Hydraulic conductivities of no greater than 1 ? 10^{-7} cm/sec. The field permeability of the liner shall be verified by using one of the following methods:

(A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.

(B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter (ASTM D 5084).

(4) Minimum thickness of one and one half (1.5) feet.

(5) Maximum hydrostatic head of ten and one half (10.5) feet.

(6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:

(A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.

(B) Soils with permeabilities less than 1 x 10^{-7} cm/sec are used to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of 1 x 10^{-7} cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.

(C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of 1 x 10^{-7} cm/sec.

(b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.

(c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.

(d) USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.

(e) Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.

(1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.

(2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions, vegetation, excessive moisture, loose soil, or abrupt changes in slope.

(3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.

(4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations. In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.

(5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.

(6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.

(7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.

(8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.

(9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.

(10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.

(11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.

(12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.

(13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

35:17-3-14. Swine Waste Management Plans

(a) A swine waste management plan or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application. A swine waste management plan or its equivalent may include, but is not limited to, a Comprehensive Nutrient Management Plan per NRCS guidance, or a Nutrient Management Plan per EPA guidance.

(b) The swine waste management plan shall include:

(1) A plan with a proposed schedule for liquid and solid swine waste removal, including sludge.

(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year,

24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid swine wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied swine wastes. The following requirements shall apply to land application of swine waste on land owned or leased by the owner:

(A) Runoff from swine waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) Swine wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure. A list of proposed or actual equipment shall be included.

(G) If swine wastes are sold or given to other persons for disposal, the owner of the LMFO shall maintain a log of the following:

(i) Date of removal from the operation.

(ii) Name of hauler.

(iii) Amount in wet tons, dry tons, gallons, or cubic yards of waste removed from the operation.

(H) Surface disposal of swine wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of swine wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(I) Runoff from swine waste storage piles shall be retained on site.

(J) Accumulation of water in swine waste storage areas shall be avoided.

(K) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of swine waste shall be based on published materials approved by the Department.

(L) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard Conservation Practice Standard Code 633, Nutrient Management Conservation Practice Standard Code 590, or ~~its~~their current replacement.

(M) The swine waste management plan shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

(4) LMFO nutrient loading.

(A) Liquid manure and bottom sludge of a waste retention structure shall be applied to land in accordance with the swine waste management plan as approved by the Department.

(B) Liquid contents of the waste retention structure shall be applied at agronomic rates and shall not exceed the nitrogen uptake of the crop. Where local water quality is threatened by phosphorus, in no case shall the owner exceed the application rates of phosphorus in the most current USDA NRCS Waste Utilization Standard. Watersheds that are nutrient limited and groundwaters that are nutrient vulnerable shall be deemed to be threatened by phosphorus.

(C) Calculation of loading rates shall be based upon the existing nitrogen content of the receiving soil and the optimum nitrogen requirement of a particular crop.

(D) All soil and waste sampling shall occur on an annual basis.

(c) Sludge material of LMFOs shall be analyzed pursuant to United States Environmental Protection Agency (USEPA) biosolids testing parameters.

35:17-3-25. Closure of swine waste retention structures

(a) If for any reason ~~the facility ceases to function or by action of the Board is ordered to cease operations~~a waste retention structure is taken out of operation permanently or by action of the State Board of Agriculture is ordered to permanently cease operations, the owner is responsible for ~~proper closure of all waste retention structures.~~notifying the Department of owner's intention to close the waste retention structures for the handling of animal waste. The owner is responsible for the proper closure of all waste retention structures to be closed. If a facility temporarily ceases operations and remains in full

compliance with its Pollution Prevention Plan, the facility shall not be considered to have permanently closed.

(b) The owner shall submit a closure plan as part of the permit application including at a minimum:

(1) The sequence of closing process including but not limited to handling of waste retention structure wastewater, solids, and handling and safe disposal of bottom sludge.

(2) Demonstrate the availability of sufficient land area for land application of the liquid, solid, and sludge component of the waste retention structure.

(3) Provide a copy of a written estimate, in current dollars, of the cost of hiring an independent third party to decommission each waste retention structure.

(c) All future changes or modifications to the closure plan shall be approved by the Department.

(d) A post closure monitoring program shall be conducted for a period of at least three (3) years.

(e) A certificate of post closure performance shall be submitted to the Department at the end of the post closure period. The certificate shall be signed by the owner and by a Professional Engineer registered in the State of Oklahoma, indicating that all waste retention structures were maintained and monitored in accordance with the approved closure plan.

(f) Closure requirements of waste retention structures shall be based on site specific conditions, as follows:

(1) The Department shall be notified in writing whenever a swine waste retention structure becomes permanently inactive, is abandoned, ~~full of solids,~~ or operation of the structure ceases permanently for any reason. Any swine waste retention structure shall be considered by the Department to have ~~ceased to function or to be inactive~~ become permanently inactive or to have ceased operations permanently in the following circumstances:

(A) The facility is closed by the Department because of repeated violations which result in the filing of a Board order to cease operations.

(B) The owner is unable to furnish documentation to show that there has been receipt of swine waste into the retention structure during the previous twenty-four (24) months and the owner is not maintaining the retention structure in consistent compliance with the applicable rules and the Department approved plans.

(2) ~~The Department shall be notified~~Upon the owner's determination that a swine waste retention structure has become permanently inactive or has permanently ceased operation the owner shall notify the Department in writing within ninety (90) calendar days thereafter of ~~cessation of operation of a~~the intention to close swine waste retention structures. Closure of ~~all~~ retention structures shall commence within six (6) months of the date of notice to the Department of the intention to close and be completed within ~~one (1) year~~two (2) subsequent growing seasons ~~of cessation of operations~~. Closure shall be in accordance with a closure plan approved by the Department. Any extension of time for closure shall be requested in writing by the owner and approved by the Department. A legal change other than a transfer of the owner of any swine waste retention structure shall not extend the time limit for closure.

(~~A~~3) Liquid contents of a waste retention structure may be pumped out and land applied according to Department rules.

(~~B~~4) Solids from the waste retention structure shall be removed and disposed of in an environmentally safe manner.

(~~C~~5) Sludge from the bottom of the waste retention structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules.

(6) The owner shall grid sample soil from the bottom of the waste retention structure and, at the owner's election, shall either:

(A) have the samples analyzed in a State certified laboratory for nitrate-nitrogen and electrical conductance; or

(B) analyze samples in the field for nitrate-nitrogen and electrical conductance using field leaching procedures and a test kit, with laboratory confirmation by sending one sample per every twenty (20) samples to a laboratory for analysis.

(7) Owner shall develop a plan, subject to Department approval, regarding soil removal, if necessary, based on the grid sample data.

(8) If soil is to be removed from the bottom of a waste retention structure, it shall be managed in an environmentally safe manner approved by the Department. Management options may include, but are not limited to, land application, disposal, and reuse.

(9) The Department may require monitoring wells if evidence indicates that contamination has migrated to the groundwater based on site specific conditions.

(~~3~~10) Exemption from closure and transfer of responsibility for any swine waste retention structure to any other party shall be requested in writing for approval by the Department.

[OAR Docket #12-660; filed 5-21-12]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 17. WATER QUALITY

[OAR Docket #12-662]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 4. Concentrated Animal Feeding Operations

35:17-4-4 [AMENDED]
35:17-4-9 [AMENDED]
35:17-4-11 [AMENDED]
35:17-4-12 [AMENDED]
35:17-4-21 [AMENDED]

AUTHORITY:

Article 6, Section 31, Constitution of the State of Oklahoma; Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 2A-1, 2A-22, et seq.

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ASTM D 698
ASTM D 4315
ASTM D 5084
United States Department of Agriculture Natural Resources Conservation Service (NRCS) standard - Nutrient Management Conservation Practice Standard Code 590
Incorporating rules:
35:17-4-4
35:17-4-9
35:17-4-11
35:17-4-12
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152, (405) 522-5803.
ANALYSIS:
The proposed amendments include minor corrections and additions to citations of reference materials, add technical specifications and reporting requirements for the construction and maintenance of waste retention structures, and revise and standardize certain testing and remediation processes.
CONTACT PERSON:
Bennett Abbott, Assistant General Counsel, Oklahoma Department of Agriculture, Food, and Forestry, Office of General Counsel, P.O. Box 528804, Oklahoma City, OK 73152-8804, phone: (405) 522-5803, email: bennett.abbott@ag.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 4. CONCENTRATED ANIMAL FEEDING OPERATIONS

35:17-4-4. License application for new facilities or operations

(a) In addition to the items required by the Oklahoma Concentrated Animal Feeding Operations Act, the application for a CAFO license of a new facility or an operation shall contain, as a minimum, the following information:

(1) Name and address of the owner of the facility.

(2) Name and address of the animal feeding operation, including driving directions from the nearest municipality and legal description of the facility.

(3) Name and address of the operator if other than the owner.

(4) Capacity in animal units and number and type of animals housed or confined.

(5) If owner is a firm, partnership, corporation, or other legal entity, the name and address of each member with an ownership interest of ten percent (10%) or more.

(6) If owner is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation.

(7) Environmental history of the past three (3) years of any CAFO operation established or operated by the owner or any other operation with common ownership in Oklahoma or any other state, including all citations, administrative orders or penalties, civil injunctions or other civil actions, and criminal actions, past, current, and ongoing, taken by any person, agency, or court relating to noncompliance with any environmental law, rule, agency order, or court action in conjunction with the operation of an animal feeding operation.

(8) List of all environmental awards or citations received or pollution prevention or voluntary remediation efforts undertaken by the owner.

(9) Copy of deed, contract to purchase, or option to purchase the proposed site of the facility, waste retention structures, and land application sites. If land application sites are not owned by the applicant, provide a notarized signed copy of spreading or effluent agreement.

(10) A map of all property owners within one (1) mile of the facility and waste retention structures and a corresponding mailing list.

(11) A plat showing:

(A) Location of the facility, waste retention structures, and all land application sites.

(B) Location and distance of all occupied residences within one (1) mile of the facility and waste retention structures. The distances shall be measured from the nearest point of the waste retention structure to the nearest point of the occupied residence.

(C) Location and distance of all occupied residences within six-hundred (600) feet of any land application site. The distances shall be measured from the nearest point of the land application site to the nearest point of the occupied residence.

(D) Location and distance of all existing public or private drinking water wells within four-hundred (400) feet of any land application site. The distance shall be measured from the nearest point of the land application site to the nearest point of the drinking water well.

(E) All open roads surrounding the facility and all land application sites.

(12) If applicable, a copy of the written waiver by a property owner releasing specified setback requirements as provided by the Act.

(13) Characterization of the physical and environmental setup of the facility, including but not limited to the following:

(A) Description of topography using a current USGS 7.5 minute topographic map highlighting the location of waters of the state within three (3) miles of the facility, waste retention structures and all land application sites, an outline of the watershed drainage area, and arrows indicating general direction of surface water drainage from the facility, waste retention sites, and land application sites.

(B) Soil map showing soil types at the facility, waste retention structure, and all land application sites.

(C) 100 year flood plain map, if applicable. In no event shall a waste storage structure be located within the 100 year flood plain as established by the Federal Emergency Management Agency (FEMA).

(14) Report from an independent soil testing laboratory containing the following:

(A) Site map showing the location of all soil borings in relation to the facility and waste retention structure.

(i) The test boring shall be in the immediate vicinity of the proposed waste retention structure.

(ii) Bore holes shall be left open for a minimum of 48 hours for the groundwater to recover.

(iii) All bore holes shall be plugged according to Oklahoma Water Resources Board requirements.

(B) Soil tests per ASTM standards on all soils to be used in construction of the liner, with the following procedures and results reported:

(i) Grain size particle distribution analysis according to ASTM standards.

(ii) A standard Proctor compaction ~~test based~~test based on ASTM ~~D698~~ D 698 procedure.

(iii) Perform Atterberg limits test per ASTM standards (ASTM D 4318).

(iv) Permeability tests on remolded samples compacted at ninety-five percent (95%) of standard Proctor maximum dry density at optimum moisture content conducted in accordance with ASTM D-5084 for the measurement of Hydraulic Conductivity of Saturated Porous Materials using a Flexible Wall Permeameter.

(v) Laboratory tests of representative samples presented in summary tables and on boring logs.

(C) Provide a soil boring log showing lithology, the above test results, and the classification of soils based on the Unified Soil Classification system.

(D) USDA Natural Resources Conservation Service (NRCS) soil testing standards and procedures shall only be substituted if the retention structure is designed by USDA NRCS Engineers.

(15) Laboratory test reports showing the amount of Nitrogen as Nitrate and total Phosphorous contained in the following:

(A) Groundwater from all existing water wells located at the facility and land application sites.

(B) All surface water impoundments located at the facility and land application sites.

(C) Composite soil samples from each land application site.

(16) A Pollution Prevention Plan (PPP) which contains an Animal Waste Management Plan (AWMP), a carcass disposal plan, an erosion control plan, and Best Management Practices (BMPs).

(17) A notarized sworn statement signed by the owner accepting full responsibility for properly closing all waste retention structures upon termination of the CAFO operation.

(18) A financial statement declaring the financial ability of an owner to operate an animal feeding operation with a liquid waste management system in order to comply with the ~~surely~~ surety requirements of the Act. The financial statement shall be confidential and shall not be opened to public inspection.

(19) A notarized certification signed by the person applying for a license, which states: "I certify under penalty of law this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation."

(20) All documentation deemed necessary and requested by the Oklahoma Department of Agriculture, Food, and Forestry to assure the quality of waters of the state are not compromised, including waste retention structure liner specifications and design plans and any other information required by the Department directly related to the construction, installation, or future modification or operation of a CAFO.

(b) All items listed in subpart (a) of this section shall be received by the Department before the application is considered complete. At the Department's discretion, no action will be taken on the application until all items have been received by the Department, including but not limited to presite inspections.

35:17-4-9. Pollution Prevention Plan (PPP)

(a) Prior to the submission of a CAFO license application, each facility shall develop a Pollution Prevention Plan (PPP) according to the Oklahoma Concentrated Animal Feeding Operations Act and rules promulgated pursuant to the Act. The Plan shall include provisions for documentation of structural

controls, documentation of operating Best Management Practices (BMPs), an Animal Waste Management Plan (AWMP), a carcass disposal plan for normal and emergency disposal of carcasses, and record keeping provisions. The Plan shall identify an individual who is responsible for implementing, maintaining, and revising the PPP.

(b) Equivalent measures contained in a site specific AWMP prepared by the United States Department of Agriculture, Natural Resources Conservation Service (NRCS) may be substituted for the appropriate PPP requirements. An AWMP developed by USDA NRCS can be substituted for the documentation of land application rate calculations.

(c) With Department approval, the owner shall amend the PPP prior to any change in design, construction, operation, or maintenance, which has significant effect on the potential for the discharge of pollutants to the surface or groundwaters of the State.

(d) The owner shall implement appropriate changes to the Plan within ninety (90) calendar days of notification that the plan does not meet one or more specified minimum requirements unless otherwise provided by the Department. If notice of changes is not received by the Department within the prescribed ninety (90) calendar days, the application shall be denied.

(e) In addition to the requirements of the Act, the PPP shall include:

(1) A list of materials that are used, stored, or disposed of at the facility which may cause pollution. A contingency plan for releases of potential pollutants shall also be included. The PPP shall contain a log of any pollutant releases and clean up of those materials. Documentation of releases shall include any corrective action taken to prevent recurrence.

(2) Testing of groundwater, Nitrogen as Nitrate, total Phosphorous, and fecal coliform bacteria levels shall be performed by an Oklahoma Department of Environmental Quality certified independent testing laboratory at least annually. All testing shall establish a management record, with all costs paid by the owner.

(3) Soil tests from land application sites shall be performed by an Oklahoma Department of Environmental Quality certified testing laboratory <u>or State operated laboratory</u> at least annually. All testing shall establish a management record, with all costs paid by the owner.

(4) Sufficient testing of wastewater in waste storage facilities shall be required at least every three (3) years and performed by a qualified independent testing laboratory. Testing may be required more frequently at an individual facility at the Department's request. Additional parameters may be required upon request of the Department.

(5) A description of management controls appropriate for the facility. The owner initiates these controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility and conform to criteria established by the Act and the Department.

(A) The location and a description of existing surface water controls. Structural controls shall be inspected at least quarterly each year for structural integrity and maintenance. Dates of inspections of the retention structure and a log of the findings of the inspections shall be maintained at the site.

(B) Documentation of retention structure capacity shall be submitted to the Department and shall be based upon input parameters, the assumptions and actual calculations, showing volumes for all intermediate steps, used in determining the appropriate volume capacity. Retention structure capacity shall be based upon the following, at a minimum:

(i) The runoff volume from open lot surfaces.

(ii) The runoff volume from areas between open lot surfaces and the retention structure.

(iii) The rainfall multiplied by the area of the retention structure.

(iv) The volume of rainfall from any roofed area that is directed into the retention structure.

(v) All waste and process generated wastewater produced during a period of time not less than twenty-one (21) calendar days, including: volume of wet manure that enters a pond; plus volume of water used for manure or waste removal; plus volume of wash or cleanup water; plus other water, including drinking water that enters the retention structure. <u>The minimum twenty-one (21) day storage capacity is an absolute minimum. The minimum storage capacity may be increased depending on the number of acres available for land application, crops and crop water demands, climate conditions, operations and management.</u>

(vi) Volume of a 25-year, 24-hour rainfall event.

(vii) One (1) foot of freeboard below spillway or outlet.

<u>(viii) A water budget based on real monthly or daily data from a rain gauge located near the facility.</u>

(C) A description of the design standards for the retention facility embankments. The following minimum design standards are required for construction or modification of a retention structure embankment:

(i) Soils used in the embankment shall be free of foreign material, including trash, brush, and fallen trees.

(ii) <u>The embankment shall be constructed in lifts no more than six (6) inches thick after compaction and compacted to a minimum of 95% of the maximum dry density and ± 2% of optimum moisture content as determined by ASTM D 698 standard proctor test.</u>

<u>(iii) Each lift of the embankment of the retention structures shall be checked to ensure proper compaction and moisture content; all readings shall be recorded and properly documented with minimum information required for documentation to include:</u>

<u>(I) project name,</u>

<u>(II) date,</u>

(III) test method used,
(IV) site name,
(V) technician name,
(VI) location of reading, including sketch, if necessary,
(VII) percent compaction,
(VIII) wet density, pcf,
(IX) dry density, pcf,
(X) moisture content,
(XI) lift number, and
(XII) soils lab name, report number and proctor test results used to obtain field measurements.

(iv) If retention structures are constructed with an emergency spillway, a minimum of one (1) foot of freeboard shall be maintained between the top of the 25-year, 24-hour storm volume and the bottom of the emergency spillway.

(~~iii~~v) An erosion control plan shall be developed and approved by the Department detailing how the owner immediately stabilizes the embankment walls to prevent erosion and deterioration. The plan shall include a preventive maintenance section. Each plan shall be approved on a case by case basis and may include the use of vegetative cover, geomembrane liners, sod, or other Department approved methods for controlling erosion.

(~~iv~~vi) A permanent measuring device shall be maintained in the wastewater retention structure to show the volume required to contain a 25-year, 24-hour rainfall event. The device shall be visible from the top of the levee and a separate mark shall be placed on the measuring device clearly identifying the 25-year, 24-hour rainfall event. Installation of the measuring device shall be performed in a manner to protect the integrity of liner at all times.

(~~v~~vii) A rain gauge shall be kept on site and properly maintained. A log of all measurable precipitation events shall be kept with the PPP.

(~~vi~~viii) Documentation of method used to ensure liner of the waste retention structure is protected at or below the inlet.

(7) The following records, in addition to those required by the Act, shall be maintained at the site for a minimum of three (3) years.

(A) Weekly measure of water level in the retention facility;

(B) Quarterly inspection and maintenance reports;

(C) Other specific information required by the Department.

(8) The following records, in addition to those required by the Act, shall be maintained at the site as long as the facility is in operation:

(A) Documentation of no significant impact, if applicable.

(B) Copy of Notice of Intent (NOI) or Notice of Termination (NOT), if applicable.

(C) Other records as required by the Department.

35:17-4-11. Criteria for liners

(a) Soil liners shall be constructed to meet the following minimum requirements:

(1) Constructed in lifts or layers no more than six (6) inches thick when compacted.

(A) Soils used in the liner shall be free of foreign material, including trash, brush, and fallen trees.

(B) All side slopes and the floor of the retention structures shall be checked after each lift to ensure proper compaction and moisture content. All readings shall be recorded and properly documented. Minimum information required for documentation shall include:

(i) Project name.
(ii) Date.
(iii) Test method used per ASTM specification.
(iv) Site name.
(v) Technician name.
(vi) Location of reading, include sketch.
(vii) Percent compaction
(viii) Wet density in pounds per cubic foot (pcf).
(ix) Dry density in pounds per cubic foot (pcf).
(x) Moisture content, percent.
(xi) Lift number.
(xii) Soils lab name, report number, and Proctor Test results used to obtain field measurements.

(2) Compaction to a minimum of ninety-five percent (95%) of Standard Proctor (ASTM ~~D 698~~D 698) at optimum or wetter moisture content.

(3) Hydraulic conductivities of no greater than 1 x 10^{-7} cm/sec. The field permeability of the liner shall be verified by using one of the following methods:

(A) If a sealed Double Ring Infiltrometer is used to determine the field permeability of the liner, at least one representative location on each corner and one location in the center of the waste retention structure bottom shall be selected for Double Ring Infiltrometer determination.

(B) At least four (4) representative undisturbed core samples, one from each corner of the waste retention structure bottom shall be retrieved for permeability determination in the laboratory. The permeability shall be determined using a Flexible Wall Permeameter (ASTM D 5084).

(4) Minimum thickness of one and one half (1.5) feet.

(5) Maximum hydrostatic head of ten and one half (10.5) feet.

(6) Hydrostatic head or water depth may be increased above ten and one half (10.5) feet in one of the following circumstances:

(A) Liner thickness above the minimum shall be increased by an amount needed to maintain the allowable seepage rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity.

(B) Soils with permeabilities less than 1 x 10^{-7} cm/sec are used to maintain the allowable seepage

rate, which shall not exceed eighty three one hundredths (0.83) feet per year pursuant to Darcy's Velocity. Soils which do not meet the maximum criteria of 1×10^{-7} cm/sec can be mixed with a sufficient amount of bentonite clay to achieve the desired standard.

(C) Any combination of (A) or (B). In no case shall hydraulic conductivity be used to reduce the minimum thickness of one and one half (1.5) feet or shall thickness be used to increase the maximum hydraulic conductivity of 1×10^{-7} cm/sec.

(b) The owner shall maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from burrowing and other animals by fences or other protective devices. Liners shall also be protected from the potential root zone of all trees.

(c) Any mechanical or structural damage to the liner shall be evaluated by an environmental, agricultural, or other Department approved professional engineer registered in the state of Oklahoma within thirty (30) calendar days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan.

(d) USDA NRCS Agricultural Waste Management Field Handbook Chapter 10 Appendix D shall only be used when an NRCS Engineer designs the retention structures.

(e) Flexible membrane or synthetic liners may be used in connection with a soil liner or as a substitute for a soil liner. Geosynthetic liners and flexible membrane liners shall be installed so as to protect waters of the State from contamination.

(1) The subgrade soil shall be prepared according to the design standards. A subgrade verification form shall be submitted with liner documentation.

(2) The surface to be lined shall be rolled and compacted and free of irregularities, undulations, protrusions, vegetation, excessive moisture, loose soil, or abrupt changes in slope.

(3) The subgrade surface shall be free of foreign material including stones, cobbles, broken pieces of wood, plastic, or glass.

(4) The owner shall provide a copy of a completed Surface Acceptance Form indicating acceptable locations. In no case shall the installer deploy any geomembrane or flexible membrane liner in areas not acceptable within these rules.

(5) If at any time during the installation the subgrade surface deteriorates or is damaged, or in any way deemed unacceptable by the regulatory authority, all work shall stop until proper repair is performed.

(6) The anchor trench shall be constructed according to the standard industry practices. The trench shall be adequately drained to prevent ponding or softening of the side walls. After installation of the liner, the trench shall be back filled, compacted, and anchored according to the standards.

(7) The liner placement plan shall take into consideration the site drainage, low lying areas, temperature, and prevailing wind velocity and direction. Field panels shall be deployed one at a time and seamed as soon as possible to minimize the risk of wind or water damage.

(8) Field panel deployment shall not proceed at an ambient temperature below forty degrees (40°) F, unless Low Temperature Welding Procedures are used. All deployed panels should be amply ballasted or sand bagged at all times to avoid wind damage.

(9) Personnel responsible for placement of the liner shall not smoke, wear damaging shoes, or engage in other activities which may cause damage to the liner. The method of deployment shall not cause scratches, crimps, or tear the liner or damage the subgrade. Adequate sand bags shall be placed on the edges of the liner to avoid wind uplifting.

(10) The installer shall visually inspect the panels as soon as possible after deployment for damage or distressed surfaces.

(11) A seam is considered a separate entity if it joins two panels. Repairs are not considered seams in this context. Seams shall be generally oriented parallel to the line of maximum slope, or along instead of across the slope. In corners and odd shaped geometric locations the number of seams should be minimized.

(12) The Extrusion Process shall be used only for repairs and patching and shall not be used for the overall operation. The Fusion Process shall be used for seaming panels together using hot-wedge type or solid wedge type automated self-propelled apparatus equipped with temperature gauges.

(13) The nondestructive seam continuity test shall be performed during daylight hours and certified by the owner.

35:17-4-12. Animal Waste Management Plans (AWMPs)

(a) An AWMP or its equivalent shall be prepared, according to Departmental policy, for each facility prior to the submission of a CAFO license application. An AWMP or its equivalent may include, but is not limited to, a Comprehensive Nutrient Management Plan per NRCS guidance, or a Nutrient Management Plan per EPA guidance.

(b) The AWMP shall include:

(1) A plan with a proposed schedule for liquid and solid animal waste removal, including sludge.

(2) A date log indicating weekly inspection of wastewater level in the retention structure, including specific measurement of wastewater level. Facilities using pits, ponds, or other waste retention structures for storage and treatment of storm water, manure, and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention structure sufficient capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The owner shall immediately restore sufficient capacity to contain a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces capacity, weather permitting. The 25-year, 24-hour rainfall event capacity shall be in addition to the one (1) foot of freeboard required.

(3) All calculations and all factors and assumptions used in determining land application rates, acreage, and crops for both solid and liquid animal wastes. Land application rates shall take into account the plant available nutrient contribution of any land applied animal wastes. The following requirements shall apply to land application of animal waste on land owned or leased by the owner:

(A) Runoff from animal waste is prohibited where it results in a discharge to surface or groundwaters of the State. The owner shall provide controls for runoff and erosion as appropriate for site conditions.

(B) Animal wastes shall not be applied when the ground is frozen or saturated or during rainfall events.

(C) It shall be considered acceptable emergency procedures for a facility which has been properly designed, constructed, and operated and is in danger of an imminent overflow due to chronic or catastrophic rainfall to discharge wastewaters to land application sites for filtering prior to discharging to surface or groundwaters of the State.

(D) Land application practices shall be managed so as to reduce or minimize the following:

(i) Ponding or puddling of wastewater on the site.

(ii) Adverse conditions that invite pests including flies and rodents.

(E) Facilities including waste retention structures, waste storage sites, land application sites, ponds, pipes, ditches, pumps, and diversion and irrigation equipment shall be maintained to insure the ability to fully comply with the terms of these rules and the Pollution Prevention Plan.

(F) Adequate equipment and land application area shall be available for removal of waste and wastewater as required to maintain the proper operating volume of the retention structure. A list of proposed or actual equipment shall be included.

(G) Surface disposal of animal wastes in the 100-year flood plain, as established by the Federal Emergency Management Agency (FEMA), or near water courses is prohibited unless protected from inundation and damage that may occur during that flood event by adequate berms or other structures. The land application of animal wastes at agronomic rates shall not be considered surface disposal and is not prohibited.

(H) Runoff from animal waste storage piles shall be retained on site.

(I) Accumulation of water in animal waste storage areas shall be avoided.

(J) Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions. Timing and rate of land application of animal waste shall be based on published materials approved by the Department.

(K) Land application shall not occur in areas defined as do not apply areas in the waste application criteria of the USDA NRCS Waste Utilization Standard Conservation Practice Standard 633 and Nutrient Management Conservation Practice Standard Code 590, or ~~its~~their current replacement.

(L) The AWMP shall identify areas which due to topography, activities, or other factors have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to surface or groundwaters of the State, the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff. Land subject to excessive erosion shall be avoided.

35:17-4-21. Closure of animal waste retention structures

(a) If for any reason ~~the facility ceases to function or by action of the Board is ordered to cease operations~~a waste retention structure is taken out of operation permanently or by action of the State Board of Agriculture is ordered to permanently cease operations, the owner is responsible for ~~proper closure of all waste retention structures.~~notifying the Department of owner's intention to close the waste retention structures for the handling of animal waste. The owner is responsible for the proper closure of all waste retention structures to be closed. If a facility temporarily ceases operations and remains in full compliance with its Pollution Prevention Plan, the facility shall not be considered to have permanently closed.

(b) The owner shall submit a closure plan as part of the permit application including at a minimum:

(1) The sequence of closing process including but not limited to handling of waste retention structure wastewater, solids, and handling and safe disposal of bottom sludge.

(2) Demonstrate the availability of sufficient land area for land application of the liquid, solid, and sludge component of the waste retention structure.

(3) Provide a copy of a written estimate, in current dollars, of the cost of hiring an independent third party to decommission each waste retention structure.

(c) All future changes or modifications to the closure plan shall be approved by the Department.

(d) A post closure monitoring program shall be conducted for a period of at least three (3) years.

(e) A certificate of post closure performance shall be submitted to the Department at the end of the post closure period. The certificate shall be signed by the owner and by a Professional Engineer registered in the State of Oklahoma, indicating that all waste retention structures were maintained and monitored in accordance with the approved closure plan.

(f) Closure requirements of waste retention structures shall be based on site specific conditions, as follows:

(1) The Department shall be notified in writing whenever a animal waste retention structure becomes permanently inactive, is abandoned, ~~full of solids,~~ or operation of the structure ceases permanently for any reason. Any animal waste retention structure shall be considered by the Department to have ~~ceased to function or to be inactive~~

become permanently inactive or to have ceased operations permanently in the following circumstances:

(A) The facility is closed by the Department because of repeated violations which result in the filing of a Board order to cease operations.

(B) The owner is unable to furnish documentation to show that there has been receipt of animal waste into the retention structure during the previous twenty-four (24) months and the owner is not maintaining the retention structure in consistent compliance with the applicable rules and the Department approved plans.

(2) ~~The Department shall be notified~~Upon the owner's determination that a animal waste retention structure has become permanently inactive or has permanently ceased operation pursuant subpart (f)(1)(B) above, the owner shall notify the Department in writing within ninety (90) calendar days thereafter of ~~cessation of operation of an animal~~ the intention to close waste retention structure. Closure of retention structures shall commence within six (6) months of the date of notice to the Department of the intention to close and be completed within two (2) subsequent growing seasons. Closure shall be in accordance with a closure plan approved by the Department. Any extension of time for closure shall be requested in writing by the owner and approved by the Department. A legal change other than a transfer of the owner of any animal waste retention structure shall not extend the time limit for closure.

(~~A~~3) Liquid contents of a waste retention structure may be pumped out and land applied according to Department rules.

(~~B~~4) Solids from the waste retention structure shall be removed and disposed of in an environmentally safe manner.

(~~C~~5) Sludge from the bottom of the waste retention structure shall be removed without compromising the integrity of the liner. Sludge may be land applied according to Department rules.

(6) The owner shall grid sample soil from the bottom of the waste retention structure and, at the owner's election, shall either:

(A) have the samples analyzed in a State certified laboratory for nitrate-nitrogen and electrical conductance; or

(B) analyze samples in the field for nitrate-nitrogen and electrical conductance using field leaching procedures and a test kit, with laboratory confirmation by sending one sample per every twenty (20) samples to a laboratory for analysis.

(7) The owner shall develop a plan, subject to Department approval, regarding soil removal, if necessary, based on the grid sample data.

(8) If soil is to be removed from the bottom of a waste retention structure, it shall be managed in an environmentally safe manner approved by the Department. Management options may include, but are not limited to, land application, disposal, and reuse.

(9) The Department may require monitoring wells if evidence indicates that contamination has migrated to the groundwater based on site specific conditions.

(~~3~~10) Exemption from closure and transfer of responsibility for any animal waste retention structure to any other party shall be requested in writing for approval by the Department.

[OAR Docket #12-662; filed 5-21-12]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 44. AGRICULTURE POLLUTANT DISCHARGE ELIMINATION SYSTEM

[OAR Docket #12-661]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Agriculture Environmental Permitting and AGPDES
Part 1. General Provisions
35:44-1-2 [AMENDED]
35:44-1-3 [AMENDED]
Subchapter 3. Permit Conditions and Requirements
35:44-3-3 [AMENDED]
AUTHORITY:
Article 6, Section 31, Constitution of the State of Oklahoma; Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 2-18.2, 2A-1 et seq., and 2A-21 et seq.; 27A O.S. § 1-3-101(D).
DATES:
Comment period:
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Submitted to Governor:
February 21, 2012
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February 21, 2012
Submitted to Senate:
February 21, 2012
Gubernatorial approval:
March 30, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 18, 2012.
Final adoption:
April 18, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standard:
Title 40, Part 450 of the Code of Federal Regulations
All references to 40 CFR shall mean as published on July 1, 2011
Incorporating rules:
35:44-1-2
35:44-1-3
35:44-3-3
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, Food, and Forestry, 2800 N. Lincoln Blvd., Oklahoma City, OK 73152, (405) 522-5803.
ANALYSIS:
The proposed rule change updates the incorporation by reference of Code of Federal Regulations citations for federal Concentrated Animal

Feeding Operations and incorporates Title 40, Part 450 of the Code of Federal Regulations into the AgPDES rules. Part 450 relates to storm water regulations relating to construction activities. The incorporation is required by EPA so the Department can complete the process of receiving authorization from EPA to operate the federal Clean Water Act programs related to agricultural construction activities. This rules is required as an emergency rule to comply with deadlines in amendments to an agency's governing law or federal programs imposed by EPA. If the rule is not approved as an emergency rule, and subsequently a permanent rule, the EPA will not authorize the Department to operate federal Clean Water Act programs to the detriment of Oklahoma citizens.

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, 2012:

SUBCHAPTER 1. AGRICULTURE ENVIRONMENTAL PERMITTING AND AGPDES

PART 1. GENERAL PROVISIONS

35:44-1-2. Incorporation by reference of federal regulations

(a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to the National Pollutant Discharge Elimination System are, unless otherwise specified, adopted and incorporated by reference in their entirety:

(1) Part 3 (Electronic Reporting) in its entirety.

(2) The following from Part 122 (NPDES Permit Regulations):

(A) 122.2 (definitions), excluding those definitions that are less stringent than the state of Oklahoma definitions found in Title 2 of the Oklahoma Statutes, Sections 2A-2 and 2A-22.

(B) 122.3 (exclusions).

(C) 122.4 (a), (b), (d), and (i) (prohibitions).

(D) 122.5 (b) and (c) (effect of a permit).

(E) 122.6 (continuation of expiring permits).

(F) 122.7 (b) and (c) (confidentiality of information).

(G) 122.21 (a)-(b), (e)-(i), (k), (m), (o), and (p) (application for permit).

(H) 122.22 (signatories to permit applications and reports).

(I) 122.23 (concentrated animal feeding operations).

(J) 122.26 (storm water discharges).

(K) 122.27 (a), and (b)(1) and (3) (silvicultural activities).

(L) 122.28 (general permits).

(M) 122.29 (new sources and new dischargers).

(N) 122.41 (conditions applicable to all permits).

(O) 122.42 (a) and (d)-(e) (additional conditions applicable to specified categories of NPDES permits).

(P) 122.43 (establishing permit conditions).

(Q) 122.44 (establishing limitations, standards, and other permit conditions).

(R) 122.45 (calculating NPDES permit conditions).

(S) 122.46 (duration of permits).

(T) 122.47 (schedules of compliance).

(U) 122.48 (requirements for recording and reporting of monitoring results).

(V) 122.50 (disposal of pollutants into wells, into publicly owned treatment works or by land application).

(W) 122.61 (transfer of permits).

(X) 122.62 (modification or revocation and reissuance of permits).

(Y) 122.63 (minor modifications permits).

(Z) 122.64 (termination of permits).

(3) The following from Part 124 (Procedures and Decisionmaking):

(A) 124.2 (definitions).

(B) 124.3(a) (application for a permit).

(C) 124.5(a), and (c) - (d) (modification, revocation and reissuance, or termination of permits).

(D) 124.6(a), (c) - (e) (draft permits).

(E) 124.8 (fact sheet).

(F) 124.10(a)(1)(ii), (iii), and (iv), (b) - (e) (public notice of permit actions and public comment period).

(G) 124.11 (public comments and requests for public hearings).

(H) 124.12(a) (public hearings).

(I) 124.13 (obligation to raise issues and provide information during the public comment period.

(J) 124.15 (issuance and effective date of permit).

(K) 124.16 (stays of contested permit conditions).

(L) 124.17(a) and (c) (response to comments).

(M) 124.19 (appeal of RCRA, UIC, NPDES, and PSD permits).

(N) 124.56 (fact sheets).

(O) 124.59 (conditions requested by the Corps of Engineers and other government agencies).

(P) 124.62 (decision on variances).

(4) Part 125 (Criteria and Standards), Subparts A and D.

(5) Part 412 (Effluent Limitations Guideline for Concentrated Animal Feeding Operations (CAFO) Point Source Category) in its entirety.

(6) Part 450 (Construction and Development Point Source Category) in its entirety.

(b) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 CFR Part 123 (EPA Regulations on State

NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

(c) Environmental Protection Agency Form 1 (general information for all applicants), Form 2b (concentrated animal feeding operations application), Form 2c (other applications), and the storm water construction activity Notice of Intent shall be incorporated by reference.

35:44-1-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2010~~2011.

SUBCHAPTER 3. PERMIT CONDITIONS AND REQUIREMENTS

35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2010~~2011.

[OAR Docket #12-661; filed 5-21-12]

TITLE 55. BOARD OF GOVERNORS OF THE LICENSED ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTERED INTERIOR DESIGNERS OF OKLAHOMA CHAPTER 10. LICENSURE AND PRACTICE OF ARCHITECTS, LANDSCAPE ARCHITECTS AND REGISTRATION OF INTERIOR DESIGNERS

[OAR Docket #12-708]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [AMENDED]
Subchapter 3. Administrative Operations [AMENDED]
Subchapter 5. Application and eligibility for licensing or registation [AMENDED]
Subchapter 7. Examination [AMENDED]
Subchapter 9. Licensing and registration [AMENDED]
Subchapter 11. Rules of professional conduct [AMENDED]
Subchapter 13. Organizational practice [AMENDED]
Subchapter 15. Violations [AMENDED]
Subchapter 17. Continuing education requirements [AMENDED]
AUTHORITY:
Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma; 59 O.S., Sections 46.1 etseq.
DATES:
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January 17, 2012 through February 16, 2012
Public hearing:
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Adoption:
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ANALYSIS:
In accordance with the Oklahoma State Architectural and Interior Designers Act codified at 59 O.S § 46.1 et. seq., the proposed revisions to Subchapter 1 are expanding definitions and clean-up. Changes to Subchapter 3 are reducing initial licensing fees, biennial License, Registration or renewal fees for individuals and firms. Changes to Subchapter 11 address the use of prototypical design within the State of Oklahoma by incorporating Board policy into these Rules. All other Rule changes are minor clean-up items.
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 AND EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

55:10-1-3. Definitions

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

"Act" means the currently enacted and effective legislation codified at 59 O.S., Section 46.1, et seq.

"Applicant" means an individual who has submitted an application for a License or Registration to the Board.

"Architect" means an individual who engages in the practice of architecture and, for the purpose of these Chapter 10 Rules, holds a License issued by the Board.

"Architect(s) of Record" means a Licensee currently licensed as an Architect or Landscape Architect and in good standing with this Board, that has met statutory and OAC 55:10 requirements, who is directly responsible to the Board for the firm practice, filings, paying all fees, penalties and submitting all documents.

"Architectural Intern" shall have the same meaning as "Intern Architect".

"ARE" means the current architect registration examination~~,~~ prepared by NCARB and adopted by the Board as the examination to be used in determining a Candidate's qualifications to practice architecture.

"Board" means the Board of Governors of the Licensed Architects, Landscape Architects and Registered Interior Designers of Oklahoma.

"Broadly Experienced" means a person who can demonstrate that the Board's equivalent education standards have

been met through a combination of education and comprehensive practice in responsible control in architectural, landscape architecture or interior design experience. This person is currently licensed or registered in the same profession ~~one of these professions~~ in another jurisdiction ~~for (10) ten years depending on the amount of education~~ and is in good standing. The person seeking licensure or registration may be required to have a personal interview by the Board and may, at the sole discretion of the Board, issue licensure or registration.

"Building types" means the types of buildings found in O.S. 59, Section 46.21b of the Act.

"Candidate" means an individual who has been approved to sit for the examinations given by the Board, or who has passed said examinations, but has not been issued a License or Certificate of Registration.

"CE" means continuing education.

"Certificate of Authority" means the authorization granted by the Board for individuals to practice or offer to practice architecture or landscape architecture in the state through an Entity.

"Certificate of Registration" means the authority granted by the Board to an individual Registrant offer services as interior design and represent the individual as ~~an~~a Registered Interior Designer in the state.

"Certificate of Title" means the authorization granted by the Board to an Entity to use the title Registered Interior Designer or offer services as registered interior design.

"CEU" means a continuing education unit of one Contact Hour.

"CIDA" means Council of Interior Design Accreditation or its successor.

"CLARB" means Council of Landscape Architectural Registration Boards or its successor.

"Contact Hour" as used in the continuing education requirements means one clock hour of not less than 50 minutes.

"Direct supervision"means working conditions where a licensed Architect, Landscape Architect or Interior Designer is in each office and is a resident Licensee or Registrant regularly employed in that office, supervising the intern or employees and is directly responsible for all tactical and technical decisions on projects.

"Entity" means any group of individuals joined together to offer or contract for services to practice architecture, landscape architecture or use the term registered interior design or the title of Registered Interior Designer. Entity shall include individuals, partnerships, firms, associations, corporations, limited liability companies and limited liability partnership and any other business or professional group recognized under the Act and approved by the Board.

"Examination" means the current licensing and registration examinations administered by this Board, or its designee, for Architects, Landscape Architects or Registered Interior Designers.

"Fiscal Year" means July 1 though June 30.

"IDP" means Intern Development Program.

"IDEP" meansthe Interior Design Experience Program.

~~**"Interior Designer"** means an individual registered by the Board to use the title Interior Designer.~~

"Interior Designer Intern" shall have the same meaning as "Intern Interior Designer".

"Intern Architect" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursuing licensure.

"Intern Interior Designer" means an individual in the process of obtaining training acceptable to the Board in order to complete requirements and/or is currently testing to pursue Registration as ~~an~~a Registered Interior Designer.

"Intern Landscape Architect" means an individual in the process of obtaining credits acceptable to the Board in order to complete requirements and is currently testing to pursue licensing as a Landscape Architect.

"LAAB" means Landscape Architectural Accrediting Board or its successor.

"LARE" means the current Landscape Architect registration examination prepared by CLARB or its successor and adopted by the Board as the licensing examination to be used in determining a Candidate's qualifications to practice landscape architecture.

"Landscape Architect" means an individual licensed to practice landscape architecture in Oklahoma.

"Landscape Architectural Intern" shall have the same meaning as "Intern Landscape Architect".

"License" means License to practice architecture or landscape architecture issued by the Board and permission to use the title Architect or Landscape Architect.

"Licensee" means a licensed Architect or Landscape Architect that practices architecture or landscape architecture.

"NAAB" means the National Architectural Accrediting Board or its successor.

"NASAD" means the National Association of the Schools of Art and Design or its successor.

"NCARB" means National Council of Architectural Registration Boards or its successor.

"NCIDQ" means National Council for Interior Designers Qualification, the organization administering examinations and setting model practice standards for the Registration of Interior Designers, or its successor.

"Prototypical Plans" are technical submissions for prototypical buildings that are prepared by and under the responsible control of an architect licensed in any jurisdiction in the United States for use in the state of Oklahoma.

"Reciprocal License" means a License granted by the Board to an individual to practice architecture or landscape architecture and granting use of the term Architect or Landscape Architect or any derivation of the word based on a current License in good standing in another jurisdiction meeting the requirements for licensing in this State.

"Reciprocal Registration" means a registration granted by the Board to an individual to use the title Registered Interior Designer or any derivation of the word based on the License or Registration in good standing in another jurisdiction meeting the requirements for Registration in this state.

"Registered Interior Designer" means an individual registered by the Board to use the title ~~Interior Designer~~.

"Registered Interior Designer of Record" means a Registered Interior Designer in good standing with this Board,

that has met statutory and OAC 55:10 requirements, and who is directly responsible to the Board for the activities, filings, paying all fees, penalties and submitting all documents for the Entity having been issued the Certificate of Title.

"Registrant" means an individual registered by the Board to use the title Registered Interior Designer, as a designation of the individual's profession.

"Registration" means the authority granted by this Board to a qualified individual to use the term Registered Interior Designer unless exempt by the Act from Registration.

"Resident State" means the state where the Applicant, Candidate, Licensee or Registrant legally resides.

"Responsible Control" shall have the meaning set forth in the Act.

"Rules" means this Oklahoma Administrative Code, Title 55, Chapter 10 Rules.

"Sole proprietorship" means the only owner of a firm, licensed or registered as an individual by the Board.

"Sponsor" means an individual, organization, association, institution or other entity that provides an educational activity for the purpose of fulfilling the continuing educational requirements of the Board.

"Technical submissions" means designs, drawings, specifications, studies and other technical reports prepared in the course of the practice of architecture or landscape architecture.

"UNE" means the former Landscape Architect licensing examination, prepared by CLARB and adopted by the Board as the licensing examination.

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

55:10-3-3. Duties of the Executive Director

The Board shall designate an Executive Director who shall have possession, on behalf of the Board, of all the official records of the Board and who shall, under the supervision of the Board, perform such duties as the Board authorizes. The Executive Director shall keep updated information on the examinations and policies of NCARB, CLARB or NCIDQ or their successors and report any and all other important information to the Board for consideration, review and action.

55:10-3-6. Official records

Among other official records required by law, or by rules of other agencies in support of law,

there shall be maintained by the Board accurate and current records including, but not limited to:

(1) Minutes of all meetings of the Board.

(2) Records of Licensees and Registrants containing the name and License or Registration number of all individuals to whom Licenses or Certificates of Registration have been issued and the date of original issuance.

(3) Files for each current Licensee, Registrant, Applicant or Candidate containing relevant verification and evaluation data, a record of examination grades and the last known address of all current Licensees and Registrants.

(4) Certificate of Authority and Certificate of Title files containing the name of each current Entity holding a current certificate, the Architect(s) of Record or Registered Interior Designer(s) of Record, relevant information of the Entity and the last known address.

(5) Financial records of funds budgeted, committed, spent, remaining and projections of appropriate request for consideration in budget development.

55:10-3-11. NCARB, CLARB and NCIDQ memberships and programs

The Board may maintain membership in NCARB, CLARB or NCIDQ or their successors and their regional conferences. It is the intention of the Board, to the extent permitted under Oklahoma law, to support NCARB, CLARB or NCIDQ or their successors programs. This Board will cooperate with NCARB, CLARB or NCIDQ in furnishing transcripts of records, administering examinations and rendering assistance in establishing uniform standards of professional qualification.

55:10-3-13. Fees and penalties

(a) **Schedule of fees and penalties are as follows:**

(1) Initial and subsequent biennial License, Registration or renewal fee -- ~~$350.00~~ $325.00

(2) Reciprocal License or Registration application fee -- $100.00

(3) Examination & Retake application fee -- ~~$75.00~~ $50.00

(4) Examination -- Actual Cost

(5) Late payment penalty -- $25.00

(6) Returned (insufficient funds) check fee -- $25.00

(7) Reinstatement penalty -- $200.00

(8) Certificate of Authority and Certificate of Title application~~, revision~~ or renewal fee--~~$350.00~~ $325.00; revisions--$100.00

(9) Duplicate certificate -- $25.00

(10) Roster-- $ .25 per page or electronic copy $25.00

(11) Transcript of hearing-- Actual Cost plus $25.00

(12) Copy of public records-- $ .25 per page

(13) Emeritus License -- All fees waived

(14) CE reinstatement penalty-- $1000.00 (per biennial renewal period of noncompliance)

(15) Civil penalties -- Set by the Act

(16) Manual processing fee-- $25.00 per transaction

(17) File Transfer fee-- $75.00

(18) Readmission Application fee-- $100.00

(b) **Fee exemption based on temporary military deployment.** The Board shall waive all fees, penalties and continuing education, if applicable, during the time Licensees, Registrants or Candidates are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment. In order to obtain this exemption, the Licensees, Registrants or Candidates are required to submit to the Board office military documentation of such deployment. Upon receipt, the staff shall make a note to the file and

the Licensees, Registrants or Candidates shall be placed on active military status for the duration of the above mentioned deployment. At the end of the temporary deployment, the Licensees, Registrants or Candidates shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The individual will than be returned to regular active status. All fees, penalties and continuing education, if applicable, will be waived until the beginning of the next biennial License or Registration period. This exemption from fees and penalties shall also apply to the Certificate of Authority or the Certificate of Title if the Licensee is the only Architect of Record or the Registrant is the only Registered Interior Designer of Record associated with the Entity.

(c) **Readmission Application fee.** This fee applies to individuals who are re-applying for their License or Registration to be reinstated for any reason, or changing from emeritus to active status. This fee does not apply to OAC 55:10-3-13 (b), Certificates of Authority or Certificates of Title.

SUBCHAPTER 5. APPLICATION AND ELIGIBILITY FOR LICENSING OR REGISTRATION

55:10-5-1. Availability of forms and Board records

All forms required for submission to the Board are available from the Board office or on the Board's website at www.ok.gov/architects. When received complete, they will be entered into the Board records.

55:10-5-2. Documents required for a License or Registration by exam

Every individual applying for an initial License or Registration by examination shall submit (i) an original application to the Board, accompanied by the applicable fees in 55:10-3-13, a 2" x 3" passport quality photograph, original college transcript and the required reference forms verifying all training experience, or (ii) through NCARB, CLARB or NCIDQ or their successors, copies of these documents and an original Oklahoma application. Information submitted will be verified and evaluated and subsequent submissions may be required of the Applicant. The forms must be complete and properly executed over the signature of the Applicant.

55:10-5-4. Evaluation criteria

(a) In the Board's evaluation of education and experience credits required, the application shall be subject to the following education and training requirement standards for the applicable profession:

(1) for Architects, as established by this Board based upon the current "NCARB Handbook for Interns and Architects," "NCARB Education Standard" and "Intern Development Program Guidelines", the Act, these Rules and/or equivalent standards determined by the Board;

(2) for Landscape Architects, as established by current CLARB standards, the Act, these Rules and/or equivalent standards determined by the Board;

(3) for Registered Interior Designers, as established by current NCIDQ standards, the Act, these Rules and/or equivalent standards determined by the Board.

(b) Rejections of applications will include evaluation reports and instructions for completing requirements.

(c) The order upon which a Candidate completes education and/or training may, at the sole discretion of the Board, be considered to have met or not met their requirements.

55:10-5-5. ~~Landscape Architect and~~Registered Interior Designer application deadlines

~~Applications for an initial License to practice landscape architecture may be made at any time. Landscape Architect applications received later than March 1st for the June exams or October 1st for the December exams will be continued to the next examination schedule.~~ Interior Design applications for initial Registration ~~as an Interior Designer~~ received later than June 1st~~March 1st~~ for the fall exams or December 1st~~October 1st~~ for the spring exams will be continued to the next examination schedule. All applications, fees and notifications must reach this office by 4:30 p.m. on the due date and postmarks will not be accepted.

55:10-5-6. Active and inactive applications

Applications for examination for current Landscape Architect Candidates testing on the six (6) year time period shall remain active for the six (6) years examination period only. At the end of the six (6) year period, these Candidates shall reapply as a new Candidate and begin testing under the five (5) year rolling clock and the current and changing provisions of CLARB or its successor or as modified by this Board in it's sole discretion. Candidates testing on the five (5) year rolling clock shall remain active for one (1) year after the last examination section was passed. Beginning July 1, 2012, new Candidates and those with expired rolling clock authorizations shall begin testing by CLARB's current and changing provisions or as modified by this Board in it's sole discretion.~~After one year from the last examination was taken, the Candidate must reapply.~~ Registered Interior Design Candidates shall remain active for ~~one (1) year~~two (2) years after the last examination was taken and must reapply. Any Candidate experiencing physical disability, illness or other extenuating circumstances may request exemption or extension from the examination retention requirements. The individual shall provide supporting documentation for the Board's review. Such hardship cases will be considered by the Board on an individual basis. Incomplete applications are withdrawn after one (1) year and the Applicant will be required to reapply. Applicants and Candidates called to active military duty in the armed forces of the United States and deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment under Section 55:10-7-1. Beginning July 1, 2009, all Architect Candidates shall test under the current and changing provisions set out by

NCARB or its successor or modified by this Board in it's sole discretion.

55:10-5-7. Qualifications for an Architect License

(a) An Applicant for an initial License to practice architecture in Oklahoma shall be an individual of good moral character and not less than 21 years of age. Further, the Applicant shall have a professional degree from an NAAB accredited program in a school of architecture or an equivalent degree and provide evidence of acceptable training in architecture as noted in Section 55:10-5-4. The Board requires completion of the IDP program prior to licensing. The Board may accept an Architect who is Broadly Experienced meeting the Board's equivalent standards of acceptable education and experience and licensed in good standing in another jurisdiction or country ~~with ten (10) years of acceptable experience and licensing~~ who has also passed the NCARB examinations or its equivalent, as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(b) The Board may, in its discretion, accept applications for an initial License to practice architecture from Applicants who are not graduates as required in Section 55:10-5-4, who furnishes evidence acceptable to the Board of having completed an equivalent educational and training program.

(c) All Applicants shall take and pass an examination on the Act and these Chapter 10 Rules, as well as pass NCARB's examination or its equivalent prior to receiving a License in the State.

55:10-5-8. Qualifications for a Landscape Architect License

(a) **General requirements.** An Applicant for an initial License to practice landscape architecture shall be an individual of good moral character and not less than 21 years of age.

(b) **Education and training requirements.** Applicants shall have a professional degree from a LAAB accredited program in a school of landscape architecture or an equivalent educational program and provide evidence of three (3) years of acceptable training credits as provided in Section 55:10-5-4 or as established by CLARB. The Board may accept a Landscape Architect who is Broadly Experienced ~~with ten (10) years~~meeting the Board's equivalent standards of acceptable education and experience and licensed in good standing in another jurisdiction or country who has passed the CLARB examinations or its equivalent, as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(c) **Training credits.**

(1) Training credits may not be counted prior to completion of the third year of college or a pre-professional degree. Thirty-two (32) semester credit hours or forty-eight (48) quarter credit hours are considered to be one (1) year. Fractions of one-half or greater will be considered one-half year and smaller fractions will not be counted. To earn full training credits, an Applicant must work at least (32) to (35) hours per week for a minimum of two consecutive months. A Candidate may earn one-half the credit specified for work of at least fifteen (15) hours per week for a minimum of four consecutive months. Training credits may also be earned by any person who works outside the U.S. or Canada if the person is under the Direct Supervision of a person credentialed to practice landscape architecture, architecture, engineering or planner and the supervision person is not registered in a U.S. or Canadian jurisdiction.

(2) Training credits are defined as follows:

(A) Diversified landscape architectural experience under the Direct Supervision and Responsible Control of a licensed Landscape Architect.

(i) 100% credit

(ii) No limit to credit

(iii) Practicing as a principal in good standing as a landscape architecture for six (6) years full time, shall be deemed to have satisfied the training requirement.

(B) Diversified landscape architectural experience under the Direct Supervision of a licensed Architect, engineer or credentialed planner in good standing.

(i) 100% credit

(ii) Two (2) years maximum credit

(C) Landscape architectural experience directly related to on site construction, maintenance, or installation operations.

(i) 50% credit

(ii) 1 year maximum credit

(D) Non-diversified experience in landscape architecture under the Direct Supervision of a licensed Landscape Architect, engineer, Architect or credentialed planner in good standing.

(i) 50% credit

(ii) One (1) year maximum credit

(d) **State Exams Required.** All Applicants shall take and pass an examination on the Act and these Rules as well as an examination on Oklahoma plant materials and CLARB's examination or its equivalent prior to receiving a License in the State.

55:10-5-10. Qualifications for Registration as an Interior Designer

(a) **General requirements.** All individuals applying for Registration as ~~an~~a Registered Interior Designer shall:

(1) Obtain all required education and training prior to Registration.

(2) Hold an accredited professional degree in interior design accredited by the Council of Interior Design Accreditation or its successor, obtain two (2) years or 3,520 hours of acceptable training as defined by this Subsection and pass the examinations for Registration as ~~an~~a Registered Interior Designer administered by NCIDQ or its successor; or

(3) Obtain an equivalent education to an accredited professional degree in interior design, as determined by the Board, obtain two (2) years or 3,520 hours of acceptable training and experience hours as defined by this Subsection and pass the examinations for Registration

as an Interior Designer administered by NCIDQ or its successor; or

(4) Have been issued a valid Registration from another state, jurisdiction or foreign country provided the requirements for Registration are equivalent to the requirements of this state as determined by the Board; or

(5) Have a degree from a program accredited by CIDA or its successor. An applicant, who has completed the program within two (2) years of the program acquiring this accreditation, shall be considered to have obtained an accredited education program in interior design.

(b) **Equivalent education and defining training requirements.** The following education, training and experience may be considered to be equivalent to the requirements of OAC 55:10-5-10(a) as determined by the Board in its sole discretion:

(1) A baccalaureate degree in programs of no less than 120 semester or 180 quarter passing credit hours of which 60 semester or 90 quarter hours, respectively, are interior design-related; and a total of no less than 3,520 hours of interior design acceptable training as defined herein;

(2) Certificate, degree or diploma with a minimum passing credit of 60 semester hours or 90 quarter passing credit hours respectively in interior design related coursework and obtain 5,280 hours of acceptable training; or

(3) Meet the educational standards set forth by the National Association of the Schools of Art and Design and other similar institutions provided the educational program has a minimum of 40 semester passing credit hours or 60 passing quarter credit hours in Interior Design related coursework and 7,040 hours of acceptable training.

(4) Thirty (30) passing semester hours from a Board approved program shall equal one (1) year of education towards the first accredited professional degree in interior design or its equivalent program.

(5) One (1) year of education credit hours from a Board approved program earned in an interior design program or its equivalent degree program shall equal two (2) years of acceptable training and experience.

(6) Four (4) years from a Board approved program shall be an equivalent standard for the first professional degree in interior design or its equivalent when computing the fifteen (15) years experience and training to equate towards the training and experience requirement in O.S. 59, Sections 46.39 through 46.40 of the Act.

(7) A second accredited professional degree in interior design or its equivalent shall count as one year of education for two (2) years of training and experience.

(8) The Board may accept an Interior Designer who is Broadly Experienced ~~with~~meeting the Board's equivalent standards ~~ten (10) years~~ of acceptable education and experience and registration who has passed the NCIDQ examinations or an equivalent examination as determined by the Board in its sole discretion and the Board's Act and Rules examination.

(c) **Education content requirements.** Educational instruction shall include, but is not limited to, the following:

(1) Building and Interior Systems

(2) Business and Professional Practices, Management and Ethics

(3) Codes and Ordinances

(4) Basic and Creative Arts

(5) Color Theory

(6) Interior Design

(7) Technical Knowledge

(8) History and theory of Art, Architecture and Design

(9) Human Factors

(10) Lighting

(11) Materials and Finishes

(12) Communication Skills

(13) Furnishings

(d) **Training and experience categories.** Training and experience credits shall be awarded for work performed in the following areas:

(1) Programming

(2) Schematic Design

(3) Design Development

(4) Contract Documents

(5) Contract Administration

(6) Professional Practice

(e) **Training and experience requirements.** The Board may accept as evidence of diversified training and experience in interior design as stated in this Subsection:

(1) Applicants having obtained the first CIDA professional accredited degree in interior design or its equivalent shall have 2 years of acceptable training and experience hours, as determined by the Board in it's sole discretion. One year shall equal 1760 hours of training and experience.

(2) Applicants may earn one (1) year of training and experience hours after completing 96 semester passing credit hours toward the first professional degree in interior design.

(3) On January 1, 2007, all individuals beginning their training and experience shall obtain credits after all educational requirements have been met for those individuals with equivalent education equating to the first accredited professional degree in interior design.

(4) Applicants with acceptable education and experience may take the examination to become ~~an~~a Registered Interior Designer, regardless of the order in which each was obtained when training and experience requirements are met and if training began prior to January 1, 2007.

(5) Training and experience hours shall be awarded based on working full time for at least two (2) consecutive months with thirty-two (32) hours per week or more in interior design or architecture. Part time training and experience hours shall be calculated at the rate of fifty percent (50%) for less than thirty-two (32) hours per week and more than fifteen (15) hours per week working for a least (4) consecutive months. Working less than fifteen (15) hours per week will not qualify for training and experience hours. Two (2) years of full time acceptable training and experience under ~~an~~a Registered Interior Designer or Architect offering services as registered interior design

shall equal one (1) year of equivalent education in interior design.

(6) Applicants beginning their training and experience after January 1, 2008, shall be under the Direct Supervision of a Registered or licensed Interior Designer or a licensed Architect offering service as registered interior design. If the Interior Designer is not registered or licensed in a jurisdiction, then all work shall be under the Direct Supervision of an NCIDQ certificate holder.

(7) The Board, in its sole discretion, shall determine whether all education, training and experience for Applicants are acceptable or not and whether or not it satisfies the requirements for Registration.

(8) If the Interior Designer is not registered or licensed in a jurisdiction then all work shall be under the Direct Supervision of an NCIDQ certificate holder.

(9) Training and experience hours shall be submitted on the Board's forms or equivalent. It is the responsibility of the Applicant to obtain all required signatures. All Board forms are to be returned directly to the Board office by the employer, as they are confidential records.

(10) Training in a firm engaged in registered interior design outside the U.S. or Canada ~~if you are~~ under the Direct Supervision of a person credentialed in registered interior design or architecture~~, who is not registered~~ in a ~~U.S. or Canadian~~foreign jurisdiction or country.

(f) **Grandfather requirements.** Any Applicant who submits a properly completed and acceptable application for Registration and pays all applicable fees shall be issued a Certificate of Registration provided the requirements below have been met:

(1) An Applicant has submitted evidence of education and training the Board deems equivalent to an accredited professional degree in interior design, satisfied training requirements, if applicable and has passed the examinations administered by NCIDQ or its successor; or

(2) Without limitation to application deadlines, an Applicant may apply who has obtained fifteen (15) years of diversified and acceptable training and experience in the practice of interior design as determined by the Board prior to July 1, 2007, and the Applicant is not registered under this Act and not exempt from the requirements for Registration in order to use the title "Registered Interior Designer" and provide services as registered interior design. The Applicant shall be exempt from passing the NCIDQ examinations and fulfilling any additional education or training requirements as determined by the Board. The Applicant may use any combination of education, training and experience as acceptable and determined by the Board to equate to the fifteen (15) years experience. Thirty (30) passing education hours equals one (1) education credit year used toward obtaining the first accredited professional degree in interior design or an equivalent degree as determined by the Board or may equal two (2) years of diversified and appropriate experience when calculating the required fifteen (15) years experience. Additionally, the Applicant obtaining a second accredited professional degree in interior design or an equivalent degree as determined by the Board may use this education in addition to other education or training.

(g) **Exemption from Registration.** An individual holding a current Architect License is exempt from Registration to offer services as registered interior design, describe services and has the right to use the term registered interior design.

55:10-5-11. Changing resident state and applying for a Reciprocal License or Registration

(a) All individuals applying for a reciprocal License or Registration shall satisfy the requirements contained in the Act and these Rules and submit an acceptable and complete application for the License or Registration requested and enclose the necessary fees payable by check, cashier's check, money order, credit card, if applicable or certified funds when submitted. Prior to being issued a License or Registration, all Applicants shall take and pass an examination on the Act and these Rules. The Secretary-Treasurer shall have the power at his/her discretion, to approve all reciprocal applications that meet the statutory requirements of the Act and Rules in this Chapter without full Board action. The License or Certificate of Registration will follow at a later date.

(b) A License certificate shall be issued and will authorize the individual to engage in the practice of architecture or landscape architecture and use the title Architect or Landscape Architect in this state until the 30th day of June of the biennial License period. A Certificate of Registration shall be issued and will authorize the individual to use the title Registered Interior Designer or offer services as registered interior design until the 30th day of June of the biennial Registration period. No License or Certificate of Registration shall be issued for longer than two (2) years.

(c) Any reciprocal License or Registration which is denied, suspended, revoked or refused to be renewed, by any state in which the Licensee or Registrant has obtained a License or Registration, or in which a certification is withdrawn by NCARB, CLARB or NCIDQ or their successors shall be cause to suspend, revoke or refuse to renew the License or Registration by this Board.

(d) The Licensee or Registrant may change the resident state to Oklahoma by qualifying and applying for a transfer of the individual's official records to this Board and paying all applicable fees in 55:10-3-13.

(e) Applications for an architectural License by reciprocity shall comply with (a) of this Section and be through NCARB or directly through the Board and only to those individuals whose states, jurisdictions,countries or territories have similar requirements and equivalent standards and extend the same privilege to this state's Applicants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(f) Applications for a Landscape Architect License by reciprocity will be through submission of a CLARB record or its successor or directly through the Board, complying with (a) of this Section and showing licensure by the UNE, ~~or~~ the LARE or its successor in any other state, jurisdiction, country or territory whose requirements for licensing are at least equivalent to the requirements of this state and extend the same privilege

of reciprocity to Landscape Architects licensed in this state. The Applicant shall be required to pass an examination on Oklahoma plant material. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a License number.

(g) Applications for an Interior Design Registration by reciprocity shall comply with (a) of this section through submission of an NCIDQ record or its successor or directly through the Board and only to those individuals whose states, jurisdictions, countries or territories have similar requirements and equivalent standards and extend the same privilege to this state's Registrants. Upon approval, a letter confirming the individual's qualifications will be sent and the Board will assign a Registration number.

(h) Rejections of applications for a License or Registration by reciprocity will be by letter explaining the reasons, and outlining procedures under which reconsideration may be possible.

SUBCHAPTER 7. EXAMINATION

55:10-7-1. Examination required for Candidates

(a) Approved Candidates for initial Landscape Architect licensing shall individually appear and pass the required examinations. Candidates may take any section of the examinations that has not been previously passed. After June 30, 1999, current Candidates shall have a six (6) year time frame to pass all sections of the examination. Any Candidate failing to obtain a passing score on all sections of the examinations within the six (6) year period, shall forfeit all credits for section(s) of the examinations previously passed. These Candidates shall re-apply as a new Candidate after their six (6) year testing period ends and begin testing under the new five (5) year rolling clock.

(b) Beginning July 1, 2007, all new Candidates for licensing as Landscape Architects shall begin on a five (5) year rolling clock. The clock begins from the date the Candidate passes the first section. The passing grade for any section shall be valid for five (5) years only, after which time the section shall be retaken if the remaining sections have not been passed within the five (5) year period. If a Candidate fails to pass all remaining sections within the initial five (5) year period, the Candidate is given a new five (5) year period from the date of the second oldest passed section and so on. After passage of all sections of the examinations within five (5) years, and prior to licensing, all Candidates shall take and pass an examination on the Act and these Rules. In addition, Landscape Architect Candidates shall take and pass an examination on Oklahoma plant materials prior to licensing. Beginning July 1, 2012, all new Candidates and those with expired rolling clock authorizations shall begin taking and passing the CLARB examinations on their current and changing provisions.

(c) Beginning July 1, 2009, all Architect Candidates shall individually appear and pass the required examinations and retain or forfeit grades according to the current policies and procedures adopted by NCARB and this Board.

(d) Candidates for Registration as Interior Designers shall be required to take and pass the NCIDQ examination on interior design, unless exempt by the Act. Candidates shall submit a properly completed and acceptable application, documentation and applicable fees to the Board. Evaluation and determination of qualifications prior to beginning testing shall be determined by the Board in its discretion according to current NCIDQ standards, the Act and these Rules. Upon approval by the Secretary-Treasurer of the Board or by the Board, NCIDQ and the Candidate shall be notified of the Board's decision for entrance into the examination. Upon completing the examination, the Candidate shall contact NCIDQ and have them send a letter to the Board indicating the Candidate has passed the entire examination. Prior to Registration, the Candidate shall take and pass an examination on the Act and these Rules. Upon payment of the Registration fee and properly completed and acceptable updating of the application, the Board may issue the Registration.

(e) Any Candidate on active military duty deployed to a temporary military assignment, shall be exempt from the retention period for the duration of the temporary deployment and is allowed to carry forward all passing scores into the individual's current examination cycle, as if the person had not been deployed. In order to qualify for this exemption, the Candidate shall submit military documentation of the deployment to the Board office and the staff shall place the Candidate on military active status. Upon return from the temporary military deployment, the Candidate shall submit to the Board office within ninety (90) days, military documentation that the individual has returned from deployment. The Candidate shall then be returned to regular active status for examination without losing any credits for sections passed in the current examination cycle.

(f) A Candidate shall not forfeit any examination time or passing score in the current testing cycle if the Board has granted an extension of time to take the examinations due to a hardship. All current passing scores in the current testing cycle will be carried into the extended time.

(g) All Candidates failing to appear to examination one year after being approved to start testing are required to reapply for admission to the examinations, except for those Candidates on temporary military deployment, who are exempt under 55:10-7-1 or those persons granted a hardship by the Board.

55:10-7-2. Examination notifications

Examination information, formats, dates, times and places will be announced in notices mailed to Landscape Architect Candidates, at their last known address. NCARB, CLARB or NCIDQ will notify all Candidates of all pertinent examination information at the Candidate's last known address.

55:10-7-9. Transfers of examination grades prior to licensing

(a) **Outgoing transfers.** The Board staff, upon written request by the Candidate and payment of the file transfer fee, will transfer ~~final or valid examination grades given under~~ the Board's jurisdiction file to any other duly constituted Architect,

Landscape Architect or Interior Design boards and to NCARB, CLARB or NCIDQ for use in evaluating such Applicant's eligibility for licensing or Registration, as applicable. A transfer to another board shall immediately terminate the Applicant's application with this Board.

(b) **Incoming transfers.** The Board, in its sole discretion, may or may not accept, toward obtaining an initial License or Registration, scores on separate test sections taken in other states by Candidates who did not meet Oklahoma requirements for admission to the exams at the time the exams were taken.

SUBCHAPTER 9. LICENSING AND REGISTRATION

55:10-9-1. The License or Registration

A License or Registration shall be issued to individuals meeting all requirements of the Act and the Rules of the Board. Such License or Registration shall identify the individual by name, License or Registration number, designate an effective date, confirm the individual's qualifications and acknowledge the individual's right to practice architecture, landscape architecture or offer services as registered interior design or use the titles Architect, Landscape Architect, Registered Interior Designer or other restricted titles defined by the Act or the Rules as the case may be, in the state. Every Architect ~~certified by NCARB, but~~ unlicensed in the state, shall apply to the Board for licensing within ten (10) working days after notification of selection (whether notified orally or in writing) as the Architect by the client/owner. Such Architect shall be licensed in the state prior to signing a contract or engaging in the practice of architecture, as defined by the Act.

55:10-9-6. Biennial License or Registration required

(a) The Act requires all Architects, Landscape Architects and Registered Interior Designers desiring to practice or use the professional titles in Oklahoma to biennially renew the License or Registration with the Board and pay a biennial License or Registration renewal fee in 55:10-3-13. Notices will be sent to all Licensees and Registrants at the last known address of record; however, it is the responsibility of each individual Licensee or Registrant to insure the renewal fees and applications are received by the Board office, properly completed and acceptable on or before 4:30 p.m. on June 30th of the renewal year to avoid penalties. Upon receipt by the Board of the individual's and if applicable, Entity's renewal forms, continuing education forms if applicable, fees and compliance with the Board's current Act and Rules in this Chapter, the License or Registration shall be renewed. No License or Registration will be issued for longer than a 2 (two) year period.

(b) Licensees or Registrants called to active military duty in the armed forces of the United States and deployed to a temporary military deployment shall comply with OAC 55:10-3-13.

55:10-9-8. Failure to biennially renew

(a) Failure to biennially renew the License or Registration and satisfy all continuing education requirements, if applicable, remit renewal fees, submit properly completed and acceptable forms with pertinent information and pay penalties where applicable in 55:10-3-13, as prescribed by the Act and the Board's current Rules in this Chapter, will result in automatic suspension and revocation of the License, Registration, Certificate of Authority and/or Certificate of Title on July 1st of the renewal year.

(b) Notices of automatic suspension and/or revocation will be sent to the last known address of the Licensee, Registrant or Entity. If a License, Registration, Certificate of Authority or Certificate of Title is not renewed for any reason, the Licensee or Registrant must immediately cease the practice of architecture, landscape architecture or offering services as registered interior design. An Architect, Landscape Architect or Registered Interior Designer shall cease using these professional titles or other titles restricted by the Act or the Rules. Individuals who continue to practice architecture, landscape architecture or offering services as a registered interior design during the time of suspension and/or revocation are subject to the fines, penalties and civil remedies contained in the Act and these Rules.

55:10-9-10. Reinstatement of canceled License or Registration

(a) Reinstatement of any License or Registration within three (3) years. Licenses or Registrations canceled for nonpayment of fees and/or failure to comply with continuing education requirements if applicable, may be renewed at any time within three (3) years, from the date of the cancellation, upon compliance with the Act and the Board's current Rules and upon paying the Board all fees which shall have been accrued at the time of the cancellation and which would have been paid at the time of reinstatement had not the License or Registration been suspended and revoked, together with the amount of penalties prescribed in 55:10-3-13. Additionally, no License or Registration shall be reinstated unless the individual has completed all past continuing education requirements, where applicable for the three (3) years and paid to the Board the penalties for reinstatement set forth in OAC 55:10-3-13. These Licenses and Registrations may be reinstated by the Board's staff upon compliance with the Act and Rules of the Board without Board action.

(b) Reinstatement of initial License or Registration after three (3) years. For those Architects, Landscape Architects or Registered Interior Designers licensed or registered initially in Oklahoma that allow their License or Registration to remain cancelled for a period exceeding three (3) consecutive years, such former Licensee or Registrant may have the License or Registration reinstated in a manner as determined by the Board consistent with the Act and these Rules, after reapplying and paying a readmission application fee. Additionally, the Licensee or Registrant shall meet all continuing education requirements where applicable, that would have been otherwise required, and pay all back fees and penalties.

(c) Reinstatement of Reciprocal Licenses or Registrationsafter three (3) years. Any Architect or Landscape Architect licensed to practice in Oklahoma by reciprocity must, after his/her reciprocal License has been canceled for more than three (3) years, re-apply through the means of which the initial License was granted or demonstrate a current License in another jurisdiction, meet all continuing education where applicable that would have been required, and pay a readmission application fee and all back fees and penalties. Registered Interior Designers must re-apply and prove a current Registration in another jurisdiction or through NCIDQ, pay a readmission application fee and pay all back fees and penalties.

(d) Returning from temporary military deployment. Licensees or Registrants returning from temporary military deployment shall notify the Board office consistent with OAC 55:10-3-13(b).

SUBCHAPTER 11. RULES OF PROFESSIONAL CONDUCT

55:10-11-7. Professional conduct

An Architect, Landscape Architect or Entity shall preserve the confidences of the client or employer. A Licensee or Entity may make contributions of service or anything of value to those endeavors which he/she/it deems worthy. A Licensee or Entity has the right to participate in the political process and to contribute time and money to political campaigns. In making political contributions, the Licensee or Entity shall do so publicly.

(1) Each office ~~in Oklahoma~~ maintained for the preparation of drawings, specification, reports or other professional work shall have a Licensee in that office having Direct Supervision of the work.

(2) A Licensee shall not sign or seal drawings, specifications, reports or other professional work for which he/she does not have Responsible Control. Provided, however, that in the case of the portions of such professional work prepared by the Licensee's licensed consultants, licensed under this or another professional license in Oklahoma, the Licensee may dually sign and seal that portion of the professional work if the licensed Architect or Landscape Architect has additionally coordinated its preparation and intends to be responsible for its adequacy. Prototypical submissions are an exception to the rule as noted in OAC 55: 10-11-9(e) (f).

(3) A Licensee or Entity shall neither offer nor make any gifts, other than gifts of nominal value including, for example, reasonable entertainment and hospitality, with the intent of influencing the judgment of an existing or prospective client in connection with a project in which the Licensee or Entity is interested. Intent of influence means influence, direct or indirect, which induces or tends to induce consideration or action with respect to any prospective work on any basis other than the merits of the matter.

(4) A Licensee or Entity shall not engage directly or indirectly an agent or representative to solicit work on his/her/its behalf whose compensation is contingent, in whole or in part, upon obtaining professional work for the Entity, Architect or Landscape Architect.

(5) A Licensee or Entity shall not make false statements about the professional work, or maliciously injure or attempt to injure the prospects, practice or employment position of others.

(6) A Licensee or Entity shall not furnish limited services in such a manner as to enable owners, draftsmen, or others to evade public health and safety requirements.

(7) ~~A Licensee or Entity provides a service to the client, as well as a product and as such is only responsible for the design of the facility represented by the drawings he or she signed, sealed and dated for a specific client and location. Should the client or any other individual modify or change locations of the facility or make changes to the design without the authorization of the Licensee, the Licensee is only responsible and liable for the project as he/she signed, sealed and dated it and the site at the original location. Nothing contained herein shall apply to prototype plans, where the Licensee is allowed to review and adapt a plan already sealed by the original Licensee and the current Licensee is making changes to adapt in whole or in part to a different location and bring the plan up to the current code requirements. In this case, the Licensee is required to sign, seal and date only the changes to the original documents and shall only be responsible for his/her new changes.~~A Licensee or Entity provides a service to the client, as well as a product and as such is only responsible for the design of the facility represented by the drawings he or she signed, sealed and dated for a specific client and location. Should the client or any other individual modify or change locations of the facility or make changes to the design without the authorization of the Licensee, the Licensee is only responsible and liable for the project as he/she signed, sealed and dated it and the site at the original location. A Licensee is allowed to review and adapt documents already sealed by the original Licensee when modifying the plan and/or bringing the plan up to the current code requirements at the same location as the original site. In this case, the Licensee is required to sign, seal and date only the modifications to the original documents and shall only be responsible for his/her new modifications.

(8) Nothing contained in 55:10-11-7-(7) shall apply to prototype plans, where the Licensee is allowed to review and adapt a prototypical technical submission, making changes to adapt in whole or in part to a different location and/or bring the plan up to the current code requirements. In this case, the Licensee is required to sign, seal and date the adapted, integrated documents and the licensee assumes full responsibility for the documents, in their entirety, as if fully prepared by or under the licensed architect's responsible control.

55:10-11-9. Authorized use of seal

(a) **Seal declares authorship.** The seal appearing on any technical submission shall be a prima facie evidence in 55:10-15-1 that said technical submission was prepared by

or under the individual named on said seal. Changes made to a signed, sealed and dated end of point product or service that are not designed by the original Licensee and that are not authorized or indicated by the seal of another Licensee on the changes, exempts the original Licensee from any authorship or liability concerning any changes made, including making site changes without the knowledge of the Licensee.

(b) **Location of seal, signature and date.** The seal impression or image shall be across the signature that may be generated electronically of the Licensee responsible to this Board for authorship of the documents thus identified. The handwritten or generated date the signature is affixed shall accompany the signature.

(c) **Use of seal is individual act.** Authorized use of the prescribed seal is an individual act. The Licensee is responsible for its security when not in use.

(d) **Use or attempted use of seal by unauthorized individuals.** No individual, other than the Licensee represented, shall use or attempt to use the prescribed seal, and no unregistered individual or Entity shall be authorized to use the prescribed seal, except as described in (c) above. Use, reproduction distribution or attempted use of the seal shall include using a set of construction documents to construct a structure on another site without the permission of the original Licensee or making unauthorized copies, ~~changes~~modifications or incorporating any portion of the specifications into another work without the use of a Licensee's seal, signature and date authorizing such ~~changes~~modifications. Prototype building plans ~~shall~~ are not required to carry the seal, signature and date of the original Licensee, but ~~may be used at other locations complying with OAC 55:10-11-9(e)(f).~~ must prior to their issue in Oklahoma be marked and qualified by a written statement to the effect of: "Prototypical design submissions not for regulatory approval or construction." These submissions do not comprise a final, comprehensive set of design and construction documents and are not intended for use on any specific project without the appropriate review, modifications and integration into a licensed architect work engaged to provide professional architectural services for the specific project."

(e) **Entire Contract.** Any licensed Architect or Landscape Architect preparing documents that would be considered to fulfill an entire contract with a client being the end point of service, whether or not the plans are complete, shall sign, seal and date those documents. The Licensee may add any words on the documents that he/she/it chooses to indicate an incomplete document and not for construction notice.

(f) **Technical submissions.** Architects and Landscape Architects are permitted to review and adapt portions of technical submissions if:

(1) the seal of the original Architect or Landscape Architect appears on the submissions to authenticate authorship.

(2) the succeeding Architect or Landscape Architect clearly identifies all modifications to the submissions.

(3) the succeeding Architect or Landscape Architect assumes responsibility and liability for the adequacy of the design on the modifications.

(4) the documents are prototypical technical submissions. An architect may sign and seal technical submissions prepared by another architect licensed in any state, jurisdiction, country or territory if the signing and sealing architect has reviewed the other architect's work and has integrated the work into his/her own technical submissions and the other architect's technical submissions are prototypical building documents. Any licensed architect signing or sealing technical submissions integrating the work of another architect into the licensed architect's own work as permitted above shall maintain and make available to the Board upon request for at least ten (10) years following such signing and sealing, adequate and complete records demonstrating the nature and extent of the licensed architect's review of and integration of the work of such other architect's work into his/her own technical submissions, and that such review and integration met the required professional standard of care. In applying his or her seal, the Oklahoma licensed architect assumes full responsibility in it's entirety for the documents as if fully prepared by or under the Oklahoma licensed architect's responsible control.

55:10-11-10. Required use of seal, signature and date on documents and retention period

(a) All Licensees shall affix their seal, signature and date, to all original working drawings, and to the original cover sheet and the page identifying all specification pages covered, including all addenda and field changes.

(b) In the absence of sheets or covers identifying all sheets or pages bound, all original contract documents of service must have the seal, date and signature of the Licensee responsible. In addition, the Licensee shall identify on the page or covers of sheets or pages bound, by name and License number the consultants used on the project and the sections the consultants worked on.

(c) An Architect, Landscape Architect or Entity shall retain a copy of all technical submissions produced for a minimum of ten (10)~~fifteen (15)~~ years following the date of preparation. Should the submissions be retained by electronic means, all submissions shall be updated into current versions so they are accessible at all times and can be printed out in a legible format.

SUBCHAPTER 13. ORGANIZATIONAL PRACTICE

55:10-13-1. Individual and group practice

Individual Licensees or Registrants holding current Licenses or Registration may organize or engage in individual or group practice of architecture, landscape architecture or organize in an Entity for the purposes of representing themselves as ~~an~~a Registered Interior Designer or offering services as registered interior design allowed by statutes of this state and which are in compliance with the Act and the Board's current Rules in this Chapter. The Secretary-Treasurer of the Board may approve these applications without full Board action.

55:10-13-2. Licensee required in each office

Each Entity ~~in the state~~ where architectural or landscape architectural services are offered or performed for execution in Oklahoma shall have a current Oklahoma licensed Architect or Landscape Architect in Direct Supervision who is listed on the Certificate of Authority as an Architect of Record.

55:10-13-4. Certificate of Authority or Certificate of Title required

Excluding sole proprietorships practicing or using a title of profession under the name of the Architect, Landscape Architect or Registered Interior Designer only, all entities, including entities using a fictitious name, practicing, offering to practice or contracting to provide architectural or landscape architectural services or using the title of Registered Interior Designer or offering services through ~~a~~as registered interior design for use in the State of Oklahoma shall file an application with the Board, pay applicable fees and penalties in OAC 55:10-3-13 and, if qualified, be issued a Certificate of Authority or Certificate of Title by the Board. Certificates of Authority or Certificates of Title may be granted by the Board to any Entity which meets the criteria of the Act and these Rules and approved by the Secretary-Treasurer of the Board.

55:10-13-5. Establishing criteria for issuance of Certificate of Authority or Certificate of Title

The Board may grant a Certificate of Authority to practice architecture or landscape architecture through individual Licensees or a Certificate of Title to represent the person as ~~an~~a Registered Interior Designer or to offer services ~~as~~of registered interior design through Registrants to those firms meeting the following criteria:

(1) An application is filed and approved by the Secretary-Treasurer of the Board or the Board.

(2) At least one general partner, or director, officer, shareholder, manager, member or principal is a licensed Architect or Landscape Architect and designated as being responsible for the practice of the profession in the State of Oklahoma or is registered as ~~an~~aRegistered Interior Designer offering services of registered interior design and responsible for the Entity. If a firm is offering multiple professions, the firm shall have at least one general partner, director, officer, shareholder, principal or for a limited liability company, a manager or member who is licensed or registered in each profession and is designated as being responsible for the activities of each profession.

(3) The firm's practice of architecture or landscape architecture in any office (e.g. branch office) is under the Direct Supervision of a resident licensed Architect or Landscape Architect and such individual supervises its activities and is listed in the Certificate of Authority as an Architect of Record.

(4) All technical submissions, original working drawings, original cover sheet and the page identifying all specification pages covered, all addenda and field changes shall be signed, sealed and dated by an Architect of Record defined in 55:10-1-3. Prototypical technical submissions refer to 55:10-11-7(8) and 55:10-11-9(d)(f)(4).

(5) The Certificate of Authority or the Certificate of Title shall identify the individual(s) Oklahoma licensed Architect(s) or Landscape Architect(s) or Registered Interior Designer(s), who shall be an Architect of Record or ~~an~~a Registered Interior Designer of Record and in responsible charge of the professional activities of the Entity; and

(6) Compliance with the Board's Rules in this Chapter and the Act shall not alleviate other members, officers, shareholders, managers, principals, directors, partners or employees from direct responsibility and liability by reason of employment or relationship with the Entity to the Board.

(7) The Certificate of Authority or Certificate of Title issued by the Board is subject to powers of renewal, suspension, revocation, denial, refusal to renew, levying criminal or civil penalties, vested in the Board by the Act and does not preclude the Board from using any other legal procedures necessary to carry out its powers and duties.

(8) A duplicate Certificate of Authority or Certificate of Title may be issued to an Entity provided:

(A) the current License or Registration renewal of the Architect(s) of Record or the Registered Interior Designer(s) of Record is current and in good standing and the Certificate of Authority or Certificate of Title is current and in good standing;

(B) a written request for a replacement or duplicate Certificate of Authority or Certificate of Title is received; and

(C) the fee is paid as prescribed in 55:10-3-13.

55:10-13-6. Biennial renewals required for Certificate of Authority or Certificate of Title

(a) Biennial renewalrequirements. An Entity desiring to practice Architecture, Landscape Architecture or use the title Architect or Landscape Architect through a Certificate of Authority or an Entity desiring to represent themselves as ~~an~~a Registered Interior Designer or offer services ~~as~~ of registered interior design through a Certificate of Title, must submit the proper fees and applicable penalties in 55:10-3-13 and forms for application and renewal biennially. No Certificate of Authority or Certificate of Title shall be issued for longer than a two (2) year period. The renewal forms, required information and fees shall be due with the Licensee's or Registrant's individual renewal which are due by 4:30 p.m. on or before June 30 of the renewal year to avoid penalties. Postmarks will not be accepted.

(b) Late payment and reinstatement penalties. Failure to biennially renew and remit payment of the renewal fee for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in a late payment and reinstatement penalties in 55:10-3-13 and cancellation of the certificate.

(c) Renewal exemption based on temporary military deployment. The exemption from fees and penalties shall apply to the Certificate of Authority or the Certificate of Title if a Licensee is the only Architect of Record or a Registrant is the only Registered Interior Designer of Record associated with

the Entity. Licensees or Registrants who are called to active military duty in the armed forces of the United States and deployed to a temporary military assignment are exempt from paying all renewal fees and penalties in OAC 55:10-3-13.

55:10-13-7. Failure to biennially renew a Certificate of Authority or Certificate of Title

(a) Failure to biennially renew the Entity and remit payment of the renewal fee and applicable penalties, submit an acceptable and complete application and other required documents or information for the Certificate of Authority or Certificate of Title on June 30 of the renewal year will result in automatic cancellation and revocation of the certificate.

(b) Automatic cancellation and revocation of the Certificate of Authority or Certificate of Title will result in the Entity paying late payment and reinstatement penalties in addition to all other fee requirements in OAC 55:10-3-13.

(c) Notices of suspension or revocation will be sent to the last known address of the Entity failing to biennially License or ~~Register~~Registrant and remit renewal fees and penalties.

55:10-13-8. Reinstatement of canceled Certificate of Authority or Certificate of Title

(a) Reinstatement for nonpayment of fees. A Certificate of Authority or Certificate of Title canceled for nonpayment of fees may be renewed upon submission of an updated acceptable and complete application form, provided the Entity currently meets all statutory requirements, the Rules of this Chapter and payment to the Board of the fees and penalties in OAC 55:10-3-13 have been paid, which have been accrued by the Entity at the time of reinstatement.

(b) Reinstatement of Certificate of Authority or Certificate of Title for cause. A Certificate of Authority or Certificate of Title suspended, denied, refused to be renewed, penalties levied, orders issued or revoked for cause may be reinstated only by Board action and only then in the manner determined by such Board action. Request for reinstatement may be filed by re-applying after all appeals have been exhausted and the further passage of six (6) months of suspension, refusal to renew, penalties levied, orders issued or revoked for cause. The request shall show the Board that the public interest will not suffer by reason of the reinstatement and should be addressed to the Secretary-Treasurer at the Board office. The Board has the sole discretion as to whether to reinstate the Certificate of Authority or Certificate of Title, deny the reinstatement and require the payment of all back fees and penalties.

(c) Reinstatement based on temporary military deployment. Entities given an exemption from paying fees and penalties because the only Architect of Record or Registered Interior Designer of Record was deployed on a temporary military deployment in the armed forces of the United States, shall notify the Board office consistent with OAC 55:10-3-13.

55:10-13-9. Compliance with laws, Rules, regulations and orders

All entities shall comply with all laws, Rules, regulations and orders issued, which apply to an individual Architect, Landscape Architect or Registered Interior Designer.

55:10-13-10. Investigations, hearings and penalties

The Board shall investigate complaints, hold hearings, issue orders and determine penalties against entities in the same manner, procedure and with the same rights and offenses as an individual Architect, Landscape Architect or Registered Interior Designer as designated in the Rules of this Chapter.

55:10-13-12. Notification of changes in firm practice required

Entities shall notify the Board office within thirty (30) days of any or all changes that affect the Certificate of Authority or Certificate of Title. Notification shall be on the Board's form, signed by an Architect or Landscape Architect of Record, Registered Interior Designer of Record, or another partner, director, officer, shareholder, principal or for a limited liability company, a manager or member of the Entity, notarized and accompanied by the fees in 55:10-3-13. Failure to properly and promptly notify the Board of these changes shall be cause for penalties, orders issued, revocation, refuse to renew or suspend of the Certificate of Authority or Certificate of Title, as designated in the Rules of this Chapter.

55:10-13-13. Authority to use professional titles

(a) Only individuals holding current Licenses or Registrations in Oklahoma and entities holding a current Certificate of Authority or Certificate of Title issued by the Board are authorized to employ the titles Architect, Landscape Architect or Registered Interior Designer or use any various construction of these words, in describing or identifying services, contracting or executing work.

(b) No unlicensed individuals or entities have authority to contract or execute architectural or landscape architectural services or offer services ~~as~~of registered interior design in this state unless they comply the Act and these Rules.

55:10-13-16. Use of deceased or retired names in titles of firm name

Use of the names of deceased or retired licensed or registered partners or directors in a firm name is permissible. Stationary, advertisements, business cards and similar items circulated to the public, shall indicate the status and year the individual retired or died. Retired individuals may also be listed as consulting Architects, Landscape Architects or Registered Interior Designers. Example:

Doe, Smith & Jones
Architects and Registered Interior Designers

John Doe	Fred Jones
Deceased, Architect	Registered Interior Designer
1988-2016	2017

55:10-13-20. Use of fictitious name in title of firm name

Fictitious names of firms are permissible so long as at least one Architect of Record or Registered Interior Designer of Record as defined in 55:10-1-3, has Direct Supervision for the activities of the firm and the individual's name appears on all stationary, business cards and similar items. Example:

The Gold Star Group
Architects & Engineers
John Brown, Architect

SUBCHAPTER 15. VIOLATIONS

55:10-15-4. Fraud or misrepresentation

Any Architect, Landscape Architect, Registered Interior Designer, Entity or any other party who shall make oral or written fraudulent, false or misleading statements on any document, report, statement, examination, investigation, plans or specifications shall, upon conviction, be deemed guilty of fraud or misrepresentation. Fraud shall include copying any documents from an employer without specific written authorization.

55:10-15-9. Filing a complaint; forms and evidence

(a) When filing a formal complaint, the party shall contact the Board office for the forms required to be completed. The complainant shall document the allegations with evidence available and shall submit ~~one original and two certified original copies~~it to the Board office. The Secretary-Treasurer of the Board shall make appropriate inquiry to verify such information and shall, base upon such information and inquiry, proceed to one of the following courses:

(1) Terminate the investigation when it appears no violation has occurred or there is insufficient evidence to support any violation; or
(2) Refer the matter to the investigative committee; or
(3) Appoint an individual investigator; or
(4) Attempt informal resolution of the matter; or
(5) Refer directly to Board.

(b) A Board member shall not discuss with any individual, any facts or circumstances concerning any investigation or formal complaint prior to holding a formal hearing, except in a Board meeting or with the Board's attorney.

55:10-15-11. Investigation committee

(a) **Appointment; officers.** The investigation committee, appointed by the Chair, shall investigate such cases referred to it. The committee shall be appointed for terms as designated by the Chair. At least a majority of the members of the committee shall be licensed or registered and in good standing with the Board. The Board shall designate one member Chair whose duty it shall be to conduct meetings of the committee, administer its activities and perform such other duties as are assigned by the Board.

(b) **Duties.**

(1) It shall be the duty of the investigation committee, upon request from the Secretary-Treasurer of the Board, to investigate to determine whether there exists probable cause to believe a violation has occurred as to justify the institution of formal or civil proceedings. The investigation shall be conducted with reasonable dispatch. The investigative committee shall report to the Executive Director of the Board the result of any investigation promptly upon its conclusion. Such report shall include a summary of evidence considered by the committee including any materials provided to the committee, their conclusions of fact and law, and recommendation with respect to institution of civil or formal proceedings. The committee may or may not, in its sole discretion, afford the accused party involved an opportunity to be heard in the course of preliminary investigation.

(2) Before a report adverse to the accused party is made, the investigative committee may or may not, in its sole discretion, notify him/her or it in writing of the complaint and allow not less than ten (10) days to reply in writing. At this level of the proceedings the accused party shall not be entitled to a hearing before the investigative committee as a matter of right, but may submit, in writing, a response ~~one original and two certified original copies~~ for consideration by the investigative committee which shall be included in the final report to the Executive Director.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

55:10-17-6. Computation of credits

Continuing education credits shall be measured in CEUs and shall be computed as follows:

(1) successfully completing one Contact Hour in course work, seminars or making professional or technical presentations at meetings, conventions or conferences shall be the equivalent of one CEU;

(2) teaching or instructing a qualified presentation, approved by the Board, shall constitute two CEUs for each hour spent in the classroom. Teaching credit shall be valid for teaching a course or seminar in its initial presentation only. Teaching credit may be claimed by full-time faculty at a college, university or other educational institution for the initial presentation only and shall be related to health safety, welfare issues only;

(3) authoring a published paper, article, writing a continuing education course or a book shall be the equivalent of 24 CEUs (No CEU's will be approved for newspaper or similar news articles);

(4) successfully completing one university semester hour of credit shall be the equivalent of 12 CEUs~~;~~.

~~(5) mentoring other individuals in the Licensee's profession in extra curricular settings and activities. Credit shall be two (2) Contact Hours equals one CEU.~~

55:10-17-7. General course/program requirements

(a) All programs and courses are subject to auditing and the Board may disapprove any course not meeting the intended continuing education criteria set forth in this Subchapter.

(b) All courses sponsored by NCARB, CLARB, The American Institute of Architects and the American Society of Landscape Architects will count for the required continuing education requirements if they met the requirements of this Subchapter and the intent of the Board.

(c) Continuing education courses must be at least one Contact Hour in length and meet the topic area guidelines described in this Subchapter.

(d) Continuing education courses will be approved or disapproved by the Board based upon the information presented at the time of audit.

(e) To qualify for continuing education, the course must:

(1) include technical and practical applications which impact public health, safety and welfare and,

(A) maintain, improve, expand or enhance the quality of the existing technical knowledge;

(B) fill voids that may exist in the professional education and internship training; or

(C) develop new and relevant technical profession skills and knowledge.

(2) have clear purposes and objectives;

(3) be well organized, presented in a sequential manner, and provide evidence of pre-planning;

(4) be presented by individuals who arewell-qualified by education or experience in the field being taught; and

(5) provide individual participant documentation for record keeping and reporting.

(f) Architects and Landscape Architects may secure continuing education credit through the following types of programs and courses:

(1) attending professional or technical presentations at meetings, conventions or conferences;

(2) attending in-house programs sponsored by corporations or other organizations;

(3) successfully completing seminars, tutorials, short courses, correspondence courses, televised courses or video-taped courses;

(4) making professional or technical presentations at meetings, conventions or conferences;

(5) teaching or instructing, complying with OAC 55:10-17-6;

(6) authoring published papers, articles or books;

(7) successfully completing college or university sponsored courses~~; and~~.

~~(8) mentoring other individuals in the Licensee's profession in extra curricular settings and activities. Credit shall be two (2) Contact Hours equals one CEU.~~

(g) Subject content acceptable for purposes of architecture continuing education shall be limited to:

(1) Study of Codes including safety codes, and laws and regulations governing the practice of architecture.

(2) Environmental Issues.

(3) Design proficiency.

(4) Study within planning, engineering, interior design, construction contracting and related disciplines.

(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.

(6) Specialization, preservation, adaptive reuse, building types) etc.

(7) Construction Documents and Services.

(8) Materials and Methods.

(9) Mechanical, Plumbing, Electrical and Life Safety.

(10) Structural technology.

(11) Energy efficiency.

(12) Project administration.

(13) Professional ethics.

(14) Americans with Disabilities Act guidelines.

(h) Subject content acceptable for purposes of landscape architecture continuing education shall be limited to:

(1) Study of Codes including safety codes, and laws and regulations governing the practice of landscape architecture;

(2) Environmental issues;

(3) Design proficiency;

(4) Study within planning, engineering, horticulture, construction contracting and related disciplines;

(5) Legal aspects of contracts, documents, insurance, bonds, project administration, etc.

(6) Specialization in areas of concentration;

(7) Construction documents and sources;

(8) Project administration;

(9) Professional ethics;

(10) Safety guidelines (Playgrounds, trails, etc.);

(11) Herbicide and pesticide use;

(12) American Disability Act Guidelines;

(13) Irrigation system design;

(14) Grading and drainage.

55:10-17-9. Disallowance

(a) The Board has final authority with respect to approval of courses, credits, and continuing education hours.

(b) If the Board determines through an audit, that continuing education hours are to be disallowed, an Architect or Landscape Architect shall have 30 calendar days after notification to substantiate the original claim or earn other continuing education hours to meet minimum requirements and submit documentation to the Board office. This section only applies to persons who met the requirements by the biennial deadline.

(c) Fraud or misrepresentation in certification of course attendance or any other aspect of fulfilling continuing education requirements will be disciplined in accordance with the Act, including revocation or denial of the renewal of a License and/or Certificate of Authority, if applicable.

55:10-17-10. Licensee responsibilities

(a) The Architect or Landscape Architect is responsible for retaining proof of participation in continuing education activities. Such verification includes, the following as applicable:

(1) A log showing activity claimed, sponsoring organization, location, duration, etc. signed by the Sponsor; or

(2) Attendance certificates; or
(3) Signed attendance receipts; or
(4) Sponsor's list of attendees (signed by an individual in responsible charge of the activity).

(b) These records must be retained until January 1st following the filing of an application for License renewal. Copies shall be furnished to the Board for audit purposes if requested.

(c) The Architect or Landscape Architect must be present for the entire duration of the course for all approved course Contact Hours.

55:10-17-12. Requirements and responsibilities

(a) The Board has set forth the following criteria that will be reviewed in approving continuing education hours:

(1) Subject matter meeting the intent and purpose of requiring continuing education for Architects and Landscape Architects that complies with the requirements of the Act and these Rules.

(b) Courses shall be related to health, safety or welfare only as ~~defined by NCARB and~~ adopted by this Board. ~~Welfare is also defined as the Licensee participating in an architecture or landscape architecture mentoring program for the benefit of students.~~

(c) Architects and Landscape Architects are encouraged to take programs of intermediate and advanced levels.

(d) Courses that are issuing reporting certificates should contain the following: participant's name, sponsor name, course title, number of contact hours, date course given, sponsor or monitor signature.

(e) Licensees shall maintain a record of all reporting certificates or other documentation issued for verification of attendance until January 1st after submitting the License renewal. Duplication or falsification, as-well-as misuse, of reporting certificates or other documentation may be grounds for disciplinary action against the Licensee.

(f) Courses should issue to attendees seeking continuing education credit, a "Course Evaluation Summary Form".

(g) Sponsors should verify the identity of course participants.

(h) Sponsors are encouraged to publicize their courses. A list of licensed Architects and/or Landscape Architects may be secured for a nominal fee from the Board. Applicable fees must be submitted with the request. The Board shall have thirty (30) days from receipt of the request to process and provide the requested listing.

(i) Architects and Landscape Architects cannot obtain partial credit for portions of courses taken.

(j) Brief absences or tardiness during a course—are discouraged, however, if necessary the total of the absence of the attendee from the course should not exceed 10% of the course Contact Hours.

(k) Administrative procedures and introductions should be limited to no more than 10% of the course's Contact Hour credits. Specific course content should utilize no less than 80% of the course Contact Hours.

[OAR Docket #12-708; filed 5-23-12]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 5. FEES

[OAR Docket #12-709]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
160:5-1-2 [AMENDED]
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Commission on Consumer Credit; 14A O.S. § 6-302.
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ANALYSIS:
The rule amendment allows the Administrator of Consumer Credit to authorize the refund of a license fee paid to the Department of Consumer Credit for good cause shown by an applicant or licensee. The rule amendment also modifies existing language to indicate that fees are non-refundable unless required or indicated otherwise by statute or rule.
CONTACT PERSON:
Roy John Martin, General Counsel, Department of Consumer Credit, 3613 N.W. 56th Street, Suite 240, Oklahoma City, OK 73105, 405-522-4665.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75, O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

160:5-1-2. Fees

Fees charged by the Department are as follows:

(1) **Supervised Lenders**

(A) $290.00 annual license fee.
(B) $425.00 investigation fee.
(C) A late fee of $10.00 per day for thirty (30) days shall be assessed for each license that is not renewed by December 1.
(D) $500.00 examination fee that is payable at the time of license application or license renewal.
(E) $25.00 fee for a duplicate or amended license
(F) $25.00 fee for a returned check

(G) A $50.00 late fee shall be assessed for any annual report received after May 1.

(H) All fees are non-refundable unless the Code or these rules require or indicate otherwise.

(2) **Notification filings**

(A) $120.00 annual filing fee for each business location.

(B) A late fee of $10.00 per day shall be assessed for each filing that is not received by January 31.

(C) All fees are non-refundable unless the Code or these rules require or indicate otherwise.

(3) **Pawnbrokers**

(A) $240.00 annual license fee.

(B) $325.00 investigation fee.

(C) $400.00 examination fee that is payable at the time of license application or license renewal.

(D) $25.00 amended or duplicate license fee.

(E) $25.00 returned check fee.

(F) A late fee of $10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.

(G) All fees are non-refundable unless the Act or rules require or indicate otherwise.

(4) **Rental purchase lessors**

(A) $200.00 annual license fee.

(B) $200.00 investigation fee.

(C) $400.00 examination fee that is payable at the time of license application or license renewal.

(D) $100.00 per contract reviewal fee for each rental purchase agreement that is submitted to the Administrator for review and approval.

(E) $25.00 amended or duplicate license fee.

(F) $25.00 returned check fee.

(G) All fees are non-refundable unless the Act or rules require or indicate otherwise.

(5) **Health Spas**

(A) $300.00 annual registration fee.

(B) $200.00 investigation fee.

(C) $100.00 per contract reviewal fee for each health spa contract that is submitted to the Administrator for review and approval.

(D) A late fee of $10.00 per day for thirty (30) days shall be assessed for each registration renewal that is not received by December 1.

(E) $25.00 amended or duplicate registration fee.

(F) $25.00 returned check fee.

(G) All fees are non-refundable unless the Act or rules require or indicate otherwise.

(6) **Credit Services Organizations**

(A) $200.00 annual license fee.

(B) $300.00 investigation fee.

(C) $25.00 amended or duplicate license fee.

(D) $400.00 examination fee that is payable at the time of license application or license renewal.

(E) $25.00 returned check fee.

(F) A late fee of $10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.

(G) All fees are non-refundable unless the Act or these rules require or indicate otherwise.

(7) ~~**Precious Metals and Gem Dealers**~~ **Precious Metal and Gem Dealers**

(A) $300.00 annual license fee for precious metal and gem dealers, $200 annual license fee for precious metal and gem dealer employees.

(B) $425.00 investigation fee for precious metal dealers.

(C) A late fee of $10.00 per day for thirty (30) days shall be assessed for each precious metal and gem dealer and employee license renewal that is not received by December 1.

(D) $25.00 amended or duplicate license fee for precious metal and gem dealers and employees.

(E) $25.00 return check fee for precious metal and gem dealers and employees.

(F) All fees are non-refundable unless the Act or these rules require or indicate otherwise.

(8) **Mortgage Brokers and Mortgage Loan Originators**

(A) $950.00 mortgage broker application fee.

(B) $200.00 mortgage loan originator application fee.

(C) $200.00 annual license fee for mortgage brokers and mortgage loan originators.

(D) A late fee of $10.00 per day for thirty (30) days shall be assessed for each mortgage broker or mortgage loan originator license renewal that is not received by December 1.

(E) $150.00 mortgage broker branch office annual license fee.

(F) $150.00 inactive status fee for a mortgage broker license, mortgage broker branch office license or mortgage loan originator license.

(G) $25.00 fee for each mortgage broker, mortgage broker branch or mortgage loan originator license change, duplicate license or returned check [59:2095.7(M)(5)]

(H) Each mortgage broker, mortgage broker branch office and mortgage loan originator shall pay a $10.00 fee for each initial application and each license renewal to be deposited into the Oklahoma Mortgage Broker and Mortgage Loan Originator Recovery Fund.

(I) Mortgage brokers and mortgage broker branch offices shall pay a $500.00 examination fee that is payable at the time of license application or license renewal.

(J) Mortgage loan originators shall pay a $50.00 examination fee that is payable at the time of license application and license renewal.

(K) All fees are non-refundable unless the Act or these rules require or indicate otherwise.

(9) **Deferred Deposit Lenders**

(A) $350.00 annual license fee for each licensed location.

(B) $700.00 investigation fee for each license.

(C) $500.00 examination fee that is payable at the time of license application or license renewal.

(D) A late fee of $10.00 per day for thirty (30) days shall be assessed for each license renewal that is not received by December 1.

(E) A late fee of $50.00 shall be assessed for any annual report received after May 1.

(F) $25.00 fee for each license change, duplicate license or returned check.

(G) All fees are non-refundable unless the Act or these rules require or indicate otherwise.

(10) **Other**

(A) $0.25 fee per page for copies [51:24A.5(3)]

(B) $1.00 fee per copied page for a certified copy [51:24A.5(3)]

(C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)].

(D) The Administrator may authorize a refund of a fee paid to the Department for good cause shown by an applicant or licensee.

[OAR Docket #12-709; filed 5-24-12]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #12-731]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-3. Definitions [AMENDED]
165:5-1-5. Filing of documents [AMENDED]
Part 5. Response to Citizen Environmental Complaints
165:5-1-26. Receipt of pollution complaints [AMENDED]
Subchapter 5. Dockets
165:5-5-1. Dockets; identifying initials [AMENDED]
Subchapter 7. Commencement of a Cause
Part 3. Oil and Gas
165:5-7-6.1. Horizontal well unitization for shale reservoirs [NEW]
165:5-7-6.2. Multiunit horizontal wells in shale reservoirs [NEW]
165:5-7-9. Well location exception [AMENDED]
165:5-7-27. Enhancement or addition of injection and disposal wells [AMENDED]
165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility [NEW]
Subchapter 9. Subsequent Pleadings
165:5-9-2. Subsequent pleadings [AMENDED]
165:5-9-3. Emergency applications [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. §52, 17 O.S. §152, 27A O.S. §1-3-101, 47 O.S. §177.2, 47 O.S. §230.24, 47 O.S. §230.34a, 47 O.S. §1124, 47 O.S. §1124.2, 52 O.S. §§87.6 through 87.9, 52 O.S. §139, 68 O.S. §607, Article IX, Section 18 of the Oklahoma Constitution, and OAC 165:5-1-7
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Subchapter 7. Commencement of a Cause
Part 3. Oil and Gas
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165:5-7-6.2. Multiunit horizontal wells in shale reservoirs [NEW]
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ANALYSIS:
OAC 165:5-1-3 is amended to add a definition for the phrase "business day," and to modify the definition of "legal holiday." OAC 165:5-1-5 is amended to clarify document filing requirements. OAC 165:5-1-26 is amended to change "working days" to "business days" with respect to mailing written acknowledgements of receipt of pollution complaints. OAC 165:5-5-1 is amended to define subject matter dockets. OAC 165:5-7-6.1 establishes application, notice and order requirements regarding horizontal well unitizations for shale reservoirs, and OAC 165:5-7-6.2 establishes such requirements pertaining to multiunit horizontal wells in shale reservoirs, in accordance with the provisions of Enrolled House Bill No. 1909 (2011). OAC 165:5-7-9 is amended to address well location exception requirements. OAC 165:5-7-27 is amended to add notice provisions regarding proposed horizontal injection and disposal wells. OAC 165:5-7-35.1 establishes procedures for changes of operator regarding commercial pits, commercial soil farming sites and/or commercial recycling facilities. OAC 165:5-9-2 and OAC 165:5-9-3 are amended to address notice requirements regarding subsequent pleadings and emergency applications, respectively.
CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL

165:5-1-3. Definitions

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

"Administrative Law Judge" means an Oil and Gas Appellate Referee, Referee, Administrative Law Judge, Hearing Officer, an officer, attorney, or any other employee of the Commission to whom the Commissioners delegate by order or otherwise, the authority to conduct a hearing.

"Applicant" means any person commencing a proceeding.

"Application" means any written request by an applicant commencing a proceeding for Commission action or relief.

"Attorney" means a licensed attorney currently admitted to practice before the Supreme Court of Oklahoma, or an attorney currently licensed to practice in another state who is granted under principles of reciprocity permission to appear in proceedings of the Commission.

"Business day" means a day that is not a Saturday, Sunday, or legal holiday.

"Commission" means the Oklahoma Corporation Commission, the public entity created under the provisions of Article IX, Section 15, Oklahoma Constitution.

"Commissioner" means a member of the Commission.

"Complaint" means the written document that opens a cause and seeks enforcement of an order, rule, or regulation of the Commission or relief against a named respondent based upon an alleged violation of law or of a rule, regulation, or order of the Commission.

"Document" means any written matter filed in a cause. A "document" includes any attached appendices.

"Intervenor" means any party of record who is not an applicant or named respondent.

"Legal holiday" means only those days declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which United States mail is not delivered.

"Oil and Gas Appellate Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing oil and gas operations in Oklahoma who shall provide central support to the Commission en banc in the hearing of oil and gas matters before the Commission en banc.

"Order" means that which is required or commanded to be done, or not to be done, and shall be generally reserved for the requirement or directive portion of an official order or decision of a proceeding; or the promulgation of rules, regulations, and requirements in matters in which the Commission acts.

"Party of record" means a person who makes formal appearance either in person or by an attorney at any stage of a cause whether or not seeking affirmative relief.

"Person" means an individual, partnership, corporation, association, trust, and every other type of legal entity, including an officer or employee of the Commission.

"Protestant" means a person who, upon grounds of private or public interest, resists an application or any relief sought thereby. A protest is governed by the rules applicable to a response.

"Record" of any proceeding shall consist of the following:

(A) Preliminary exhibits, including pleadings, motions, notices, and proof of publication;

(B) Transcript of proceedings at all hearings;

(C) Depositions, stipulations, interrogatories and answers, written testimony, offers of proof, and similar matters;

(D) Exhibits, together with attachments, appendices, and amendments thereto;

(E) Initial Report of the Administrative Law Judge and Report of the Oil and Gas Appellate Referee, if any;

(F) Exceptions and motions subsequent to the hearing;

(G) Orders or rules of the Commission; and

(H) Any other document or matter relevant to the issues ordered to be included by the Commission.

"Referee" means a duly licensed attorney in the State of Oklahoma who is familiar with statutes and rules governing Commission regulated entities in Oklahoma who shall provide central support to the Commission en banc in the hearing of matters before the Commission en banc.

"Regular mail" means first class United States Mail, postage prepaid, and includes hand delivery. Wherever in OAC 165:5 a person is directed to mail by regular mail, such directive shall not preclude mailing by restricted mail.

"Respondent" means a named person against whom relief is sought in a proceeding, or a person who is entitled to receive a notice of hearing as set forth in 165:5-7-1(m), or who appears in opposition to relief sought by the applicant, and includes the term "defendant".

"Restricted mail" means mailing by certified mail, return receipt requested, within the United States and its territories and mailing by registered mail outside the United States and its territories. For purposes of service outside the United States, "registered mail" includes any means provided by Federal Rule of Civil Procedure 4(f).

"Secretary" means the Secretary of the Commission.

"Staff counsel" means the General Counsel or other attorney on the staff of the General Counsel's Office when acting as counsel for the Commission.

165:5-1-5. Filing of documents

(a) **Document form.** Documents filed with the Court Clerk may be printed, typewritten or reproduced by any legible method. Documents shall be on 8 1/2" x 11" paper. Exact duplicates of oversized exhibits or other documents must be filed in sections on 8 1/2" X 11" paper to allow for optical imaging of the exhibit by the Court Clerk. Exceptions to the required document size may be allowed by the Court Clerk for exhibits or other filed information that cannot be created on the required size paper. All legal notices and affidavits of publication of legal notices shall be filed with the Court Clerk by the applicant or the attorney for the applicant in a cause. All legal notices and affidavits of publication of legal notices must be filed with the Court Clerk in a format that is prepared for optical imaging or digital processing; provided, however, if any affidavit of publication of a legal notice obtained by the applicant or the attorney for the applicant from the newspaper

publishing such legal notice is not in a format for optical imaging or digital processing, the applicant or the attorney for the applicant may modify a copy of such affidavit of publication so that the affidavit is in a format for optical imaging or digital processing. Quotations shall be indented. Subsequent to the filing of the original application, every page of documents filed with the Court Clerk shall contain a page number, the applicable subject matter docket listed in OAC 165:5-5-1(a), the docket number assigned to the cause by the Court Clerk, and document type, e.g., application, motion, response, or brief. All filed documents must have a continuous pagination for the entire document, including exhibits and attachments. The original application shall include all this information, except the docket number, on each page.

(b) **Filing refused.** The Court Clerk is authorized to refuse to accept for filing any document containing defamatory, scurrilous or improper language, or otherwise in violation of any of the rules of this Chapter. In case of such refusal, upon request, the document shall be presented to the Commission for ruling on acceptability for filing.

(c) **Signed original; copies.** A signed original of every document requiring an attorney's signature shall be filed for use of the Commission, with additional copies as may be required by the Court Clerk. The requirements of this subsection shall not be jurisdictional. All documents shall include the party's or attorney's actual or electronic signature, typed name, business mailing address, telephone number, facsimile number and electronic mail address, if any. All documents, except notices of hearing, signed by an attorney shall contain the name of the State Bar Association to which the attorney belongs and his/her State Bar Association number.

(d) **Requirement conflicts.** Wherever any provision of the Constitution or laws of Oklahoma makes a requirement as to notice or procedure which exceeds or conflicts with any provision of the rules of this Chapter, the former shall govern.

(e) **Informal communications.** Nothing in the rules of this Chapter shall prohibit informal inquiry or complaint to the Commission by mail or in person, which matters shall be handled administratively by the staff in an effort to secure amicable adjustment or agreement among affected persons. No official order shall be issued as a result of any informal proceedings.

(f) **Facsimile transfers.** The Court Clerk shall accept pleadings submitted by facsimile transfer during regular Commission business hours pending payment of appropriate filing fee and submission of a proper original and requisite copies within five (5) calendar days of the filed facsimile, in accordance with the provisions of 165:5-1-6(a). New applications must be transferred and completed prior to 4:00 p.m. of each business day. A facsimile shall be deemed filed on date of receipt, unless the proper original is not timely received and/or the appropriate filing fee is not paid. When the original documents are not received within five (5) calendar days of receipt of the facsimile and/or the appropriate filing fee is not timely paid, the facsimile will be destroyed and the original documents will not be deemed timely filed. ~~If the original is not received within four (4) days of receipt of the facsimile, the Office of Administrative Proceedings will attempt to contact the person submitting the facsimile.~~

PART 5. RESPONSE TO CITIZEN ENVIRONMENTAL COMPLAINTS

165:5-1-26. Receipt of pollution complaints

(a) Any pollution complaint received by the Commission or any of its Divisions, including any regional or district offices, shall be recorded immediately upon receipt in such format as the Commission may designate.

(b) A written acknowledgement of pollution complaint receipt will be mailed to the complainant, alleged violator, and other relevant parties, if known, within two (2) ~~working~~business days following receipt of the pollution complaint and shall provide the status of the pollution complaint at that time.

SUBCHAPTER 5. DOCKETS

165:5-5-1. Dockets; identifying initials

(a) **Subject matter dockets.** Subject matter dockets shall be maintained by the Court Clerk, with identifying initials preceding the docket number as follows:

(1) General ~~docket~~Docket (GD), which shall consist of causes not coming within the purview of any other docket listed below.

(2) ~~Motor carrier docket (MC)~~Conservation Docket (CD), which shall consist of causes to prevent waste and protect or adjust the correlative rights of parties owning interests in the common source of supply or unitized management of a common source of supply including, but not limited to, spacing, increased density, location exception, pooling and unitization.

(3) ~~Conservation docket (CD)~~Consumer Services Docket (CS), which shall consist of causes initiated by (A) the Director of the Consumer Services Division against a retail public utility or (B) a customer against the customer's regulated utility provider of telecommunications, electricity, natural gas, water, steam or other regulated service of a public utility seeking to require the utility to abide by approved tariffs, state statutes, Commission rules, or Commission orders. Public utility includes public utilities and telecommunications carriers as defined by 17 Okla. Stat. §§ 41, 139.102 and 151.

(4) ~~Pollution docket (PD)~~Enforcement Docket (EN), which shall consist of causes initiated by the Commission or any of its directors, the Attorney General of Oklahoma, or other affected parties to find parties in contempt of Commission rules or to require compliance of parties with applicable statutes, rules, and Commission orders.

(5) ~~Natural Gas Policy Act docket (US)~~Gas Gathering Docket (GG), which shall consist of causes initiated for determination of reasonable fees and terms or conditions of service related to open access to natural gas gathering systems.

(6) ~~Rulemaking docket (RM)~~Motor Carrier Citation Docket (MCC), which shall consist of causes initiated by

issuance of citations by Commission motor carrier/vehicle officers at roadside, weigh stations or on-site, for alleged violation of state statutes, Commission rules or federal regulations regarding the registration, licensing, certification, or operation of motor carriers or commercial motor vehicles.

(7) ~~Enforcement docket (EN)~~Oil and Gas Citation Docket (OGC), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division, seeking to find parties in contempt of Commission rules as listed in Appendices E and F of OAC 165:10 and to impose the penalties therein.

(8) ~~Transportation docket (TD)~~Petroleum Storage Tank Docket (PSD), which shall consist of causes initiated by the Director of the Petroleum Storage Tank Division or other party seeking relief from Commission rules, disputing PSD decisions regarding jurisdiction, corrective action, licensing, system shutdown, Petroleum Storage Tank Indemnity Fund eligibility or reimbursement.

(9) ~~Public Utility docket (PUD)~~Petroleum Storage Tank Division Citation Docket (PSC), which shall consist of causes initiated by issuance of citations by Commission fuel inspectors for alleged violation of state statutes or Commission rules regarding operation of petroleum storage tank systems.

(10) ~~Petroleum Storage Tank docket (PSD)~~Pollution Docket (PD), which shall consist of causes initiated and related to the protection of the environment regarding oil and gas production or the disposal, injection, remediation or storage of deleterious substances produced from oil and gas related activities including, but not limited to, applications for injection wells, commercial disposal wells, disposal pits and recycling.

(11) ~~State fund plugging docket (SF)~~Public Utility Docket (PUD), which shall consist of causes initiated by the Director of the Public Utility Division, a public utility, or other party with standing concerning any matter relating to public utilities, except rulemaking.

(12) ~~Consumer Services docket (CS)~~Rulemaking Docket (RM), which shall consist of causes initiated by the Commission or any of its directors for the promulgation, amendment, or repeal of a Commission statement or group of related statements of general applicability and future effect that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. [75 Okla. Stat. § 250.3(17)] Formal petitions by the public for rulemaking shall be part of the General Docket. If the Commission orders a rulemaking proceeding as a result of such petition, the rulemaking proceeding shall be part of the Rulemaking Docket.

(13) ~~Oil and Gas Citation docket (OGC)~~State Fund Plugging Docket (SF), which shall consist of causes initiated by the Director of the Oil and Gas Conservation Division seeking authorization to use monies from the Commission's Plugging Fund to plug or replug abandoned wells in the State of Oklahoma.

(14) ~~Petroleum Storage Tank Division Citation docket (PSC)~~Transportation Docket (TD), which shall consist of causes initiated by:

(A) an applicant protesting a Transportation Division determination denying a motor carrier's application seeking a license, certificate, or permit from the Transportation Division to lawfully operate as a for-hire or private motor carrier or for a special permit or registration;

(B) an applicant protesting a Transportation Division determination denying its registration or fuel tax application or proposed audit assessment;

(C) an application by the Transportation Division modifying, suspending, canceling or revoking an existing certificate, permit, registration, or license;

(D) an application by the Transportation Division modifying a previously issued order;

(E) an application by the Transportation Division to effect an operational change in a transportation regulated entity;

(F) an interested party protesting a license, certificate, permit or registration being issued or renewed;

(G) an interested party seeking to modify, suspend, cancel, or revoke an existing certificate, permit, registration or license or to assess penalties to a motor carrier, registrant or licensee;

(H) a pipeline operator seeking a pipeline acceptance;

(I) any individual, entity or railroad seeking approval to update, open or close a railroad crossing; or

(J) any interested party seeking relief from the Commission in transportation matters relating to its jurisdiction.

(15) "Oil and gas dockets" as used in these Rules includes the following dockets: CD, PD, ~~US~~GG, SF and OGC.

(b) **Docket assignment.** Every cause shall be assigned a docket number by the Court Clerk, and all documents filed in the cause shall bear the docket number, including the year prefix. The Court Clerk shall:

(1) File-stamp each document received with the date of receipt.

(2) Record every document filed in the cause.

(3) Maintain a complete file of all original documents filed in every cause.

(c) **Improper docketing.** If the Commission, an Administrative Law Judge, or the Court Clerk determines that an application has been filed on an improper docket as set forth in (a) of this Section, the Commission shall enter an order transferring the application to the proper docket. The Office of Administrative Proceedings shall send the order transferring the application to the proper docket to the applicant, who shall be responsible for sending the order to all parties of record.

(d) **Procedural dockets.** In addition to the subject matter dockets described in (a) of this Section, the Commission may, from time to time, designate procedural dockets.

SUBCHAPTER 7. COMMENCEMENT OF A CAUSE

PART 3. OIL AND GAS

165:5-7-6.1. Horizontal well unitization for shale reservoirs

(a) The application, and the notice of hearing on the application, for an order creating a horizontal well unitization for a shale reservoir pursuant to 52 O.S. §87.9 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon:

(1) Each person or governmental entity having the right to share in production from the proposed unitization covered by the application; and

(2) The operator, as shown by the records of the Commission, of each well that is commencing to or currently producing from the shale reservoir in any unit or any separate tract of land for which no unit has been formed for such shale reservoir adjoining, cornering or adjacent to the proposed unitization.

(b) If the applicant is the operator of a well commencing to or currently producing from the shale reservoir in a unit or a separate tract of land for which no unit has been formed for such shale reservoir adjoining, cornering or adjacent to the proposed unitization, notice of hearing shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each owner, as shown by the records of the operator, with a working interest in such well in the shale reservoir.

(c) Notice of hearing regarding an application for an order creating a horizontal well unitization for a shale reservoir pursuant to 52 O.S. §87.9 shall be published as provided in OAC 165:5-7-1(n)(2).

(d) The application for an order creating a horizontal well unitization for a shale reservoir shall contain the following:

(1) The legal description of the lands covered.

(2) The names and addresses of the applicant and proposed operator or operators of the proposed unitization.

(3) Allegations concerning the existence of facts relating to the proposed unitization as provided in 52 O.S. §87.9(B).

(4) A map or plat showing the governmental sections included within the proposed unitization and the location of proposed horizontal well(s) to be drilled for the recovery of oil and gas from the shale reservoir. If applicable, the map or plat should show the location of all other wells, including abandoned and drilling wells and dry holes, within the shale reservoir.

(5) The name and depth of each shale reservoir to be affected, including any potential associated common source of supply.

(6) A log of a representative well completed in the shale reservoir which is the subject of the application.

(7) A plan of development of the area included within the proposed unitization as provided in 52 O.S. §87.6(B)(11) and 52 O.S. §87.9(E). The plan of development must also address the conditions upon which the unit shall terminate.

(8) Reference to any companion application, identified by the type of requested relief, such as any application for location exception, for pooling, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for horizontal well unitization.

(e) Each application for an order creating a horizontal well unitization for a shale reservoir shall be limited to two (2) governmental sections, although the size of the unitization may be expanded by including additional governmental sections up to a maximum unit size of four (4) governmental sections for good cause shown pursuant to 52 O.S. §87.9(C).

(f) An order approving an application for a horizontal well unitization for a shale reservoir shall include the elements identified in 52 O.S. §87.9(F) and other applicable portions of 52 O.S. §87.9.

(g) Any pooling application filed pursuant to 52 O.S. §87.9(I) regarding a horizontal well unitization for a shale reservoir shall be filed pursuant to OAC 165:5-7-7.

165:5-7-6.2. Multiunit horizontal wells in shale reservoirs

(a) The application, and the notice of hearing on the application, for an order approving a multiunit horizontal well in a shale reservoir pursuant to 52 O.S. §87.8 shall be served no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon each person or governmental entity having the right to share in production from each of the affected units covered by the application.

(b) Notice of hearing regarding an application for an order approving a multiunit horizontal well in a shale reservoir pursuant to 52 O.S. §87.8 shall be published as provided in OAC 165:5-7-1(n)(2).

(c) The application for an order approving a multiunit horizontal well in a shale reservoir shall contain the following:

(1) The legal description of the affected units.

(2) The name and address of the applicant and proposed operator of the proposed well.

(3) The name and depth of each shale reservoir to be affected, including any potential associated common source of supply.

(4) The information required by 52 O.S. §87.8(B)(4).

(5) Allegations concerning the existence of facts relating to the proposed well as provided in 52 O.S. §87.8(B)(6).

(6) Reference to any companion application, identified by the type of requested relief, such as any application for spacing, for location exception, for increased density, for pooling, for modification of any previous pooling order, or for any other relief that may be appropriate under the specific facts of a cause, if such companion application is filed in conjunction with or is pending at the time of the filing of the application for multiunit horizontal well(s).

(d) An order approving an application for a multiunit horizontal well in a shale reservoir shall require the allocation of the reasonable drilling, completion and production costs and of the commingled production and proceeds in accordance with 52 O.S. §87.8(B).

(e) Any pooling application filed pursuant to 52 O.S. §87.8(B)(3) involving a multiunit horizontal well for a shale reservoir shall be filed pursuant to OAC 165:5-7-7.

165:5-7-9. Well location exception

(a) The application and ~~Notice~~notice of hearing for an order ~~authorizing~~granting a well location exception for a well drilled or to be drilled for oil or gas into any common source of supply at a ~~requested~~ location ~~therein~~ other than that ~~prescribed~~authorized by a rule or order of the Commission shall be served by the applicant no less than fifteen (15) days prior to the date of the hearing, by regular mail, upon the operator of each well located in an adjoining or cornering tract of land or drilling and spacing unit, currently producing from the same common source of supply, toward which tract or unit the well location ~~is~~has been or is proposed to be moved. The application and ~~the same~~ notice of hearing also shall be ~~required if the requested well location would be closer to the wells producing from those~~served, in the manner required above, upon the operator of any well located in an adjoining or cornering ~~tracts~~tract of land or drilling and spacing ~~units~~unit currently producing from the same common source of supply, if the requested well location is closer to the offsetting well than would be permitted ~~at a legal location~~under the applicable well location tolerances or requirements. Provided, however, if the applicant, or any other entity to be ~~named operator of the~~ authorized to drill or otherwise operate the~~requested~~subject well ~~location~~, is the operator of any of the wells ~~in an adjoining or cornering tract of land or drilling and spacing unit,~~ identified ~~herein~~ above, then the ~~applicant~~application and notice of hearing shall be~~serve~~served, in the manner required above, upon each working interest owner in any such well ~~by regular mail~~. ~~All applications and notices for location exception shall specify the surface location of the well.~~

(b) For any well other than a directionally drilled well or a horizontal well, the application and notice of hearing for a location exception shall specify the proposed or actual surface location of the well expressed in feet from the two nearest boundaries of the drilling and spacing unit, or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled.

(~~b~~c) For a directionally drilled well, the application and notice of hearing for a location exception shall ~~also include~~specify the proposed or actual subsurface location of the well's entry into and the proposed or actual subsurface location of the well's exit from the common source of supply for which the location exception is requested, expressed in feet from the two nearest boundaries of the drilling and spacing unit~~,~~ or, if no drilling and spacing unit has been established, from the two nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. ~~Provided that, at the time of hearing, the well's surface location may be changed and the location of the well's entry into the common source of supply and/or the location of the well's exit from the common source of supply, as set out in the notice of hearing, may be changed to another subsurface location which is not closer to the offsetting well or to the drilling and spacing unit boundaries or the tract boundaries described in the notice of hearing.~~For purposes of this section, a directionally drilled well does not include a horizontal well.

(~~c~~d) For a horizontal well, the application and notice of hearing for a location exception shall ~~also include~~specify the proposed or actual subsurface location of the completion interval, as defined by OAC 165:10-3-28, within the common source of supply for which the location exception is requested, expressed as the distance in feet ~~of each end point of the completion interval~~ from the ~~two (2)~~ nearest boundaries of the drilling and spacing unit~~,~~ or, if no drilling and spacing unit has been established, from the ~~two (2)~~ nearest boundaries of the mineral estate(s) upon which the well will be or has been drilled. ~~In addition, a tolerance distance shall be expressed in terms of feet from the proposed completion interval. If the applicant does not intend to drill between the two end points of the completion interval on a straight line in the horizontal plane, the application shall contain a pre-plat depicting the proposed location of the entire completion interval within the unit or tract.~~

(~~d~~e) The proposed subsurface location for a directionally drilled well or a horizontal well may be described in the application and notice of hearing as no closer than specified footages from the nearest boundaries of the drilling and spacing unit or, if no drilling and spacing unit has been established, from the nearest boundaries of the mineral estate(s) upon which the well will be drilled.

(f) At the time of hearing, a well's location, as set out in the application and notice of hearing, may be changed to another location that is not closer to the boundaries of the drilling and spacing unit or mineral estate(s) described in the application and notice of hearing, that is not closer to any offsetting well the operator of which, or any working interest owner in which, was required to be notified under this section, and that does not require notice to additional operators or working interest owners under this section.

(g) If at the time of the hearing on an application for a directionally drilled well or a horizontal well, the applicant does not have the results of the well survey required by OAC 165:10-3-27, then the Administrative Law Judge may recommend the issuance of an interim order granting the application and, if so, shall consider whether to adjust the allowable based on the potential locations of the well in each common source of supply for which the order is sought. All potential locations shall be considered in the interim order. If the directionally drilled well or the horizontal well is drilled and completed in compliance with the interim order, the well shall be assigned the allowable as set out in the interim order.

(h) If a directionally drilled or horizontal well is drilled and completed in compliance with an interim order approving a location exception, and no party of record has requested a hearing, the Commission may issue a final order approving the location exception, without further hearing, based on an

administrative review by the Commission's Technical Services Department of the following documents, which the applicant must ~~be filed~~file with the Court Clerk for the record: the directional survey, a final plat showing the actual location of the lateral, and the well completion report. The applicant must also submit a proposed final order to the Commission's Technical Services Department ~~regarding causes remanded for~~in any cause handled through the administrative review process. In the event the directional survey shows that a directionally drilled or horizontal well was not drilled and completed in compliance with the interim location exception order, the applicant shall notify the Commission and all of the parties entitled to notice in the original hearing establishing the interim order by filing an amended application in the cause setting forth the actual subsurface locations of the well and by giving proper notice thereof. The actual subsurface locations of the well will be considered at a hearing conducted on the date specified in the interim location exception order, or on such date to which the hearing is continued.

(~~e~~i) Notice of hearing on an application for an order ~~authorizing~~granting a well location exception for a well drilled or to be drilled for oil or gas at a location other than that ~~prescribed~~authorized by a rule or order of the Commission shall be published pursuant to OAC 165:5-7-1(n)(2).

165:5-7-27. Enhancement or addition of injection and disposal wells

(a) Each application for the approval of a newly drilled or newly converted injection well or disposal well shall be filed with the UIC Department on Form 1015 and shall be verified by a duly authorized representative of the operator.

(b) The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

(1) Plat.

(A) Noncommercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well, and dry hole within one-quarter (1/4) mile of the enhanced recovery injection well or disposal well, and identifying the surface owner of the land on which the enhanced recovery injection or disposal well is to be located, and each operator of a producing leasehold within one-quarter (1/4) mile of each enhanced recovery injection or disposal well.

(B) Commercial. A plat showing the location and total depth of the well or wells and each abandoned, producing or drilling well and dry hole within one-half (1/2) mile of the disposal well, and identifying the surface owner of the land on which the disposal well is to be located, and each operator of a producing leasehold within one-half (1/2) mile of each disposal well.

(2) If the well has been drilled, a copy of the Completion Report (Form 1002A) and any available electric or radioactivity log of the well.

(3) A schematic diagram of the well showing:

(A) The total depth or plugback depth of the well.

(B) The depth of the injection or disposal interval indicating both the top and bottom.

(C) The geological name of the injection or disposal zone.

(D) The depths of the tops and bottoms of the casing and cement to be used in the well.

(E) The size of the casing and tubing, and the depth of the packer.

(4) Information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter fresh water strata.

(A) When the fluid injection rate is 1,000 barrels per day or less, or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 200 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(B) When the fluid injection rate is greater than 1,000 barrels per day or an equivalent rate for any fraction of twenty-four (24) hours, an overlying strata of at least 500 feet in thickness between the lowest base of fresh water and the top of the proposed interval of injection is considered sufficient evidence of fresh water protection.

(C) If the overlying strata is less than required in (A) and (B) of this paragraph, the Commission may administratively approve injection provided a finding is made that such injection will not initiate fractures through the overlying strata into the fresh water strata. Applicant is required to furnish the Commission sworn evidence and data in support of such findings. The Commission, when issuing a permit approving fluid injection, shall consider the following:

(i) Maximum injection rate.

(ii) Maximum surface injection pressure.

(iii) Injection fluid.

(iv) The lithology and rock characteristics of the injection zones and overlying strata.

(5) Proposed operating data:

(A) Daily injection rates and pressures.

(B) Geologic name, depth, and location of injection fluid source.

(C) Qualitative and quantitative analysis of fresh water from two (2) or more fresh water wells within one (1) mile of the proposed enhanced recovery injection or disposal well showing location of wells and dates samples were taken, or statement why samples were not submitted. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(D) Qualitative and quantitative analysis of representative sample of water to be injected. The analysis shall include at a minimum chloride, sodium, and total dissolved solids.

(c) A copy of the application for approval of injection or disposal of water or other substances in a well shall be served by

the applicant within five (5) days of the date the application is filed by regular mail or delivered to the owner of the surface of the land on which the injection or disposal well is to be located and to each operator of a producing leasehold within one-half (1/2) mile of the well location. In addition, if the application involves a proposed horizontal injection or disposal well, a copy of the application for approval shall be served by the applicant within five (5) days of the date the application is filed by regular mail or delivered to each operator of a producing leasehold within one-half (1/2) mile of the lateral of the proposed well.

(d) Notice of an application relating to injection, disposal or commercial wells shall be published one time for injection and noncommercial disposal wells and two times for a commercial disposal well in a newspaper of general circulation published in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which land embraced in the application are located. The notice shall include:

(1) PD or tracking number.
(2) Name and address of applicant.
(3) Location of proposed well to nearest 10 acre tract.
(4) Well name.
(5) The geological name of the injection formation.
(6) The top and bottom of the injection interval.
(7) Maximum injection pressures.
(8) Maximum B/D or MCF/D injection rate.
(9) The type of well (injection, disposal, commercial).

(e) If a written objection to the application is filed within fifteen (15) days after the application is published for injection and noncommercial disposal wells or thirty (30) days after the last publication date for commercial disposal wells, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof shall be given in the same manner as required for the filing of the application. If no objection is filed and the Commission does not require a hearing, the matter may be approved administratively by the Manager of Underground Injection Control.

(f) Optionally, the operator can file a Unit-wide Application for Injection (Form 1015U) that fulfills all the requirements of (b) through (e) of this Section. Upon review and approval, the operator receives a Unit-wide permit that allows the operator to file a traditional, individual well application (Form 1015) and if it fits the Unit-wide criteria, the UIC permit can be issued immediately without additional area of review, notice, or protest period.

165:5-7-35.1. Change of operator regarding commercial pit, commercial soil farming site and/or commercial recycling facility

(a) **Application.** Each application requesting the issuance of an order changing a designation of operator in an order authorizing a commercial pit under 165:10-9-1, a commercial soil farming site under 165:10-9-2 and/or a commercial recycling facility under 165:10-9-4 (collectively "commercial facility") shall comply with the application requirements of OAC 165:5-7-1(a) through (e).

(b) **Notice of application.** Notice of the application for a change of operator regarding a commercial facility shall be published one time in a newspaper of general circulation in Oklahoma County, Oklahoma, and in a newspaper of general circulation published in each county in which the subject lands are located. The notice shall include the following information:

(1) The legal description of the commercial facility to the nearest ten-acre tract.

(2) The name and physical mailing address of the current operator of the commercial facility and the name and physical mailing address of any entity to whom transfer of operation of such facility is sought.

(3) The name, physical mailing address, telephone number, electronic mail address and facsimile number of the applicant or its representative, whom anyone may contact for additional information concerning the application.

(4) The notice must also include the following language:

(A) Written protests to the relief sought must be filed with the Court Clerk's Office, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK, 73152-2000, within fifteen (15) days of the later of the date of publication of the notice of application and service of the application and notice of application on all respondents in the cause. Written protests must specify the name of the applicant, cause number, reasons for protest, and the name(s), physical mailing address(es), telephone number(s), electronic mail address(es) and facsimile number(s) of the protestant(s).

(B) If there are no written protests to the application and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review without a hearing, and if the application is protested, then any protestants shall receive notice of hearing.

(c) **Procedure.**

(1) If a written protest to the application is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department within fifteen (15) days of the later of the date the notice of application is published and service of the application and notice of application on all respondents in the cause, or if hearing is required by the Commission, the application shall be set for hearing and notice thereof given in the same manner required in the filing of an application on the Pollution Docket.

(2) If no written protest is filed with the Commission's Court Clerk's Office, submitted to the applicant or its representative and to the Manager of the Pollution Abatement Department and the Commission does not require a hearing, the application shall be presented to the Manager of the Pollution Abatement Department for administrative review.

(d) **Persons to whom notice shall be given.** The applicant shall serve a copy of the application and notice of the application on:

(1) The Manager of the Pollution Abatement Department, Oklahoma Corporation Commission, P. O. Box 52000, Oklahoma City, Oklahoma 73152-2000,

(2) The Oklahoma Conservation Commission, 2800 North Lincoln Boulevard, Suite 160, Oklahoma City, Oklahoma 73105.

(3) Each surface owner and surface lessee on each tract of land adjacent and contiguous to the facility.

(e) **Proof of notice.** The applicant shall file a certificate of service and affidavit(s) of publication with the Commission's Court Clerk's Office.

SUBCHAPTER 9. SUBSEQUENT PLEADINGS

165:5-9-2. Subsequent pleadings

(a) **Reply.** No documents shall be required other than the application and responses thereto. Reply to a response shall be permitted but shall not be required.

(b) **Motions.** All other objections to or requests for action or relief shall be by motion, with service by regular mail, facsimile, electronic mail or in person as provided in this subsection, stating in concise language the action or relief sought and the facts and circumstances upon which the right thereto is based.

(1) All motions shall be set on a regularly scheduled motion docket by a Notice of Hearing to be heard by an Administrative Law Judge unless determined otherwise by a prehearing/scheduling agreement or a prehearing/scheduling order. All motions filed after a cause has been set before the Commission or assigned to an Administrative Law Judge on the merits shall be set as directed by the Commission or the assigned Administrative Law Judge. The filing of a motion may not automatically delay the hearing on the merits.

(A) Prior to the record being opened on the merits or a prehearing/scheduling agreement filed or a prehearing/scheduling order issued, notice shall be given by the movant by serving at least five (5) business days prior to the date set for hearing by regular mail, facsimile, electronic mail or in person a copy of the motion and notice on each respondent.

(B) After the record in the cause has been opened on the merits or a prehearing/scheduling agreement has been filed or a prehearing/scheduling order has been issued, notice shall be given by the movant by serving, at least five (5) business days prior to the date set for hearing, by regular mail, facsimile, electronic mail or in person a copy of the motion and notice to all parties of record.

(2) Exceptions to such motions may be lodged in accordance with the provisions of OAC 165:5-13-5(a)(1) except as provided in (A) and (B) of this paragraph.

(A) In oil and gas related matters, all decisions on motions filed after the cause has been assigned to an Administrative Law Judge shall be considered in the Report of the Administrative Law Judge unless the Administrative Law Judge directs otherwise.

(B) In all other matters, the decisions on motions filed after a scheduling agreement has been filed or a scheduling order has been issued in a cause shall be considered in the Report of the Administrative Law Judge unless the Commission or Administrative Law Judge directs otherwise.

(c) **Response/objection to motions.** Any person may file and serve a response or objection to any motion at any time before the motion is heard. The title of the response or objection shall refer to the motion being considered. Responses or objections filed to motions which already have been set for hearing shall not require a Notice of Hearing.

(d) **Amendment.** Amendment of a document may be permitted at any time upon such terms as are just. An amendment may take the form of a substitute document, an amendment or supplement, deletion of language, or correction by interlineation. Response may be made to an amended document, but shall not be required. An amended application is acceptable where notice is given according to the statutes or rules under which the original application was filed. Provided, however, no amended application shall be filed which changes the applicant's name, the type of relief requested, the legal description of the lands involved or the caption in the original application; instead, any such changes from the original application shall require the filing of a new application in accordance with Subchapter 5 of this Chapter.

(e) **Dismissal.** The applicant may dismiss the application with or without prejudice at any time prior to the record being opened at the hearing on the merits in said cause by submitting a proposed order dismissing the cause to the Office of Administrative Proceedings. Such dismissal shall not dismiss the cause as to affirmative relief sought by any respondent and, upon the appearance at the time of hearing of any respondent who has failed to receive notice of the dismissal or who has requested affirmative relief, such respondent may enter any evidence into the record and may be granted any relief which the Commission or Administrative Law Judge deems appropriate.

(1) At any time prior to the record being opened at the hearing on the merits in a cause, a respondent may file a motion to dismiss in the same manner as provided in (b) of this Section.

(2) After the record has been opened at the hearing on the merits in a cause, the cause may be dismissed by agreement of all parties of record or recommended for dismissal with or without prejudice by the Commission or Administrative Law Judge upon the Commission's or Administrative Law Judge's own motion or upon motion of any party of record. A motion to dismiss filed hereunder shall comply with the provisions of (b) of this Section; provided that, in a cause where a motion to dismiss has been filed, notice shall be served on each respondent in the cause.

(3) Upon five (5) business days notice to parties of record, the Commission may entertain motions to dismiss for any of the following reasons:

(A) Failure to prosecute.

(B) Unnecessary duplication of proceedings or res judicata.

(C) Withdrawal.

(D) Moot question or obsolete applications.

(E) Lack of jurisdiction.

(F) Failure to submit a proposed order in a timely manner.

(G) For other good cause shown.

(4) Upon posting by the Office of Administrative Proceedings fifteen (15) business days notice on a disposition docket, and mailing notice to all parties of record to a cause, the Commission may dismiss causes for any of the following reasons:

(A) Failure to submit a proposed order to the Administrative Law Judge or the Commission within thirty (30) days after the recommendation date or as directed by the Administrative Law Judge or the Commission.

(B) Failure to set a cause on a day certain.

165:5-9-3. Emergency applications

(a) **Filing.** After an application for emergency relief is filed with the Court Clerk, it may be placed on the Commission's Emergency Docket. The requisite number of file-stamped copies of the application shall be submitted to the Commission on or before 2:00 P.M. of the day preceding the hearing. No application for emergency relief shall be accepted for filing by the Court Clerk without a base application being previously filed. No base application shall be dismissed without hearing subsequent to the issuance of an emergency order in the same cause. A motion to dismiss shall be filed. Emergency applications for motor carrier causes shall be set for hearing in accordance with the provisions of the Commission rules and regulations governing motor carriers, OAC 165:20. The Commission will not accept an application for an emergency order approving a commercial facility that requires a permit under OAC 165:10-5-5, OAC 165:10-9-1, OAC 165:10-9-2 or OAC 165:10-9-4.

(b) **Notice.** Notice of hearing on an emergency application shall be served on all parties otherwise entitled to notice under the base application not less than five (5) business days prior to the date of the emergency hearing; provided that, if the applicant has received written approval from all parties of record and respondents, the provisions of this Section shall not apply. Notice of hearing on motor carrier emergency applications shall be set on the Commission docket as prescribed by law.

(c) **Exception.** In order to protect the public health and safety, the Commission may issue an emergency order without notice and hearing and without the filing of a base application.

[OAR Docket #12-731; filed 5-25-12]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #12-731A]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. §52, 17 O.S. §152, 17 O.S. §166.1, 17 O.S. §166.1a(A), 27A O.S. §1-3-101, 47 O.S. §177.2, 47 O.S. §230.24, 47 O.S. §230.34a, 47 O.S. §1124, 47 O.S. §1124.2, 51 O.S. §24A.5(3), 52 O.S. §§87.6 through 87.9, 52 O.S. §139, 68 O.S. §607, Article IX, Section 18 of the Oklahoma Constitution, and OAC 165:5-1-7
DATES:
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Approved May 24, 2012, by House Joint Resolution No. 1119
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
OAC 165:5-3-1 is amended regarding fees.
CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the

document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any ~~emergency application,~~ subsequent pleading~~,~~ or amended application except a Form 1000 required in OAC 165:10-3-1(b)(1)(A) ~~and (B)~~through (E) and OAC 165:10-3-1(c).

~~(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-21, Applications for Tax Exemptions.~~

(~~C~~B) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(~~D~~C) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)~~(G)~~(H) shall be charged for any informal dispute resolution procedure that commences.

(~~E~~D) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("~~IRPA~~IRP").

(~~F~~E) No filing fee shall be paid by a ~~party~~customer filing a Consumer ~~Complaint~~Services docket application against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable. All filing fees must be paid and documents requiring a filing fee submitted to the Court Clerk's Office for filing prior to 4:00 p.m. to allow for document processing within established hours of operation.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such ~~filing~~other fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Commercial recycling facility application - $1,000.00

(~~D~~E) Conservation docket and ~~other~~ pollution docket base applications - $100.00

(~~E~~F) Permit to drill - $175.00

(~~F~~G) Emergency walk-thru permit to drill - $500.00

(~~G~~H) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(~~H~~I) Permit for one-time land application of water based fluids - $100.00

(~~I~~J) Emergency walk-through of permit for one-time land application water based fluids - $200.00

(~~J~~K) Application for non-commercial injection or disposal well - $100.00

(L) Emergency application on the conservation or pollution docket - $100.00

(M) Tax exemption application filed pursuant to OAC 165:10-21 - $100.00

(2) **Transportation fees.**

(A) Transportation docket application - $100.00

(B) Other transportation fees:

(i) Intrastate license and certificate fees.

(I) Original ~~license~~ application filing fee - $100.00

(II) ~~License sub~~Sub application filing fee - $100.00

(III) Renewal ~~license~~ application filing fee - $50.00

(IV) ~~License reinstatement~~Reinstatement application filing fee - $100.00

(V) ~~License name~~Name change application filing fee - $50.00

(VI) Earthen or wash pit construction~~, or~~ enlargement or transfer application fee - $500.00

(VII) Identification device or per vehicle fee - $7.00

~~(ii) Intrastate certificate or permit fees.~~

~~(I) Original certificate or permit application filing fee - $100.00~~

~~(II) Certificate or permit sub application filing fee - $100.00~~

~~(III) Transfer of certificate or permit application filing fee - $100.00~~

~~(IV) Certificate or permit temporary authority application filing fee - $100.00~~

~~(V) Certificate or permit representative of estate application filing fee - $100.00~~

~~(VI) Certificate or permit reinstatement application filing fee - $100.00~~

~~(VII) Delinquent certificate or permit annual report fee - $150.00~~

~~(VIII) Certificate or permit name change application filing fee - $50.00~~

~~(IX) Voluntary suspension or abandonment of certificate or permit application filing fee - $100.00~~

~~(X) Tariff modification (requiring hearing) - $350.00~~

~~(iii) Intrastate and interstate fees.~~

~~(I) Identification device or per vehicle fee - $7.00~~

(~~II~~ii) Deleterious Substance License Permit application filing fee - ~~$260.00~~$350.00

~~(iv) Interstate fees.~~

~~(I) Exempt application filing fee - $25.00~~

~~(II) Exempt name change - $10.00~~

(~~v~~iii) International Fuel Tax Agreement (IFTA) fees.

(I) ~~International Fuel Tax Agreement~~IFTA decal - $2.00 per vehicle per decal set

(~~vi~~II) ~~International Fuel Tax Agreement~~IFTA reinstatement fee - $100.00 set

(~~vii~~iv) Trailer registration processing fee per trailer registered through the IRP System - $2.00

(v) Temporary registration and fuel permit fees.

(I) Temporary registration (72 hour trip permit) - $12.00

(II) Temporary fuel permit (120 hours) - $25.00

(III) Unladen or hunters permit (45 days) - $25.00

(vi) Harvest permit fees (power units only).

(I) Thirty day permit - $20.00 per axle

(II) Sixty day permit - $35.00 per axle

(III) 15 day extension - $8.75 per axle

(3) **Utility fee.** Public utility docket application - ~~$35.00~~$100.00

~~(4) **Consumer Services fee.** Consumer Services docket application - $35.00~~

(~~5~~4) **Enforcement fee.** Enforcement docket application - $100.00

(c) **Certified copies.** A fee of $1.00 per copied page is charged for each ~~certified~~ copy of an order or other document on file with the Commission certified by the Court Clerk, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) ~~Mail out copies~~Copies of any file or order - ~~flat fee to cover research, copying and postage not to exceed 30 pages.~~

(A) ~~1 to 15 pages - $5.00~~Non-certified copies - $0.25 per page; certified copies $1.00 per page

(B) ~~16 to 30 pages - $10.00~~Postage - actual cost

~~(C) Documents exceeding 30 pages - $0.25 per page plus postage~~

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of ~~$7.00~~$10.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page ~~when not submitted for filing with the Court Clerk's Office~~.

(h) **Payments by Credit Card**

(1) "Nationally recognized" credit card means any instrument or device, whether known as a credit card, credit plate, charge plate, debit card, or by any other name, issued with or without fee by an issuer for the use of the cardholder in lieu of a check, as defined by ~~12~~12A Oklahoma Statute § 3-104(f), in obtaining goods, services or anything else of value or for the use of the cardholder in obtaining such goods, services, or anything else of value on credit and which, in either case, is accepted by over one thousand merchants in this state. The Oklahoma Corporation Commission shall determine which nationally recognized credit card will be accepted for any payments due and owing to the Oklahoma Corporation Commission.

(2) Implementation of payment by nationally recognized credit card will be phased in over a period of time as determined by the Commission.

(3) The Oklahoma Corporation Commission will verify that sufficient credit is available before acceptance of credit card to insure that no loss of state revenue will occur by the use of such card.

(A) If a person is at a designated receiving point and credit is not available, the person then has the opportunity to pay by other methods accepted by the Commission.

(B) If a person mails in the credit card information and credit is not available, the transaction will be handled as one with no remittance and a bill will be forthcoming.

(4) The Oklahoma Corporation Commission may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of such payment as a service charge for the acceptance of such nationally recognized card.

(5) Persons wishing to pay by credit card must be willing to submit normally required credit card information to the Commission. This includes, but is not limited to: card type (VISA, etc.), card number, card expiration date, card holder name as shown, and three digit security personal identification number (PIN). The Commission assumes no liability for unauthorized use of this information.

[OAR Docket #12-731A; filed 5-25-12]

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

[OAR Docket #12-665]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Administration
Part 1. General Provisions
165:10-1-2. Definitions [AMENDED]
165:10-1-4. Citation effective date [AMENDED]
Subchapter 3. Drilling, Developing, and Producing
Part 1. Drilling
165:10-3-4. Casing, cementing, wellhead equipment, and cementing reports [AMENDED]
Part 3. Completions
165:10-3-10. Well completion operations [AMENDED]
Part 5. Operations
165:10-3-28. Horizontal drilling [AMENDED]
Subchapter 5. Underground Injection Control
165:10-5-5. Application for approval of enhanced recovery injection and disposal operations [AMENDED]
Subchapter 7. Pollution Abatement
Part 1. General Provisions
165:10-7-5. Prohibition of pollution [AMENDED]
Part 3. Storage and Disposal of Fluids
165:10-7-16. Use of noncommercial pits [AMENDED]
165:10-7-19. One-time land application of water-based fluids from earthen pits and tanks [AMENDED]
165:10-7-20. Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater [AMENDED]
165:10-7-24. Waste management practices reference chart [AMENDED]
Subchapter 9. Commercial Disposal Facilities
165:10-9-1. Use of commercial pits [AMENDED]
165:10-9-2. Commercial soil farming [AMENDED]
165:10-9-3. Commercial disposal well surface facilities [AMENDED]
165:10-9-4. Commercial recycling facilities [AMENDED]
Subchapter 11. Plugging and Abandonment
165:10-11-3. Duty to plug and abandon [AMENDED]
Subchapter 21. Applications for Tax Exemptions
Part 6. Production Enhancement Projects
165:10-21-21. General [AMENDED]
165:10-21-22. Definitions [AMENDED]
Part 7. Reestablishment of Production From an Inactive Well
165:10-21-36. Definitions [AMENDED]
Part 8. Deep Wells
165:10-21-45. General [AMENDED]
Part 9. New Discovery Wells
165:10-21-55. General [AMENDED]
165:10-21-58. Rebates - Refund procedure [AMENDED]
Part 13. Incremental Production From Enhanced Recovery Projects
165:10-21-78. Recovery of costs allowed as payback factors [AMENDED]
165:10-21-80. Expiration of exemption for incremental production [AMENDED]
Part 14. Production of Oil, Gas or Oil and Gas From Any Well Located Within Boundaries of a Three-Dimensional Seismic Shoot
165:10-21-82. General [AMENDED]
165:10-21-82.2. Qualification procedure [AMENDED]
165:10-21-82.3. Rebates - Refund procedure [AMENDED]
Subchapter 29. Special Area Rules
165:10-29-3. Rush Springs Sandstone Groundwater Basin [NEW]
AUTHORITY:
Oklahoma Corporation Commission; 17 O.S. §52, 27A O.S. §1-3-101, 52 O.S. §§87.6 through 87.9, 52 O.S. §139, 68 O.S. §1001 and OAC 165:5-1-7
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Failure of the Legislature to disapprove the rules resulted in approval on May 17, 2012.
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to OAC 165:10-21-21, OAC 165:10-21-22, OAC 165:10-21-36, OAC 165:10-21-45, OAC 165:10-21-55, OAC 165:10-21-58, OAC 165:10-21-78, OAC 165:10-21-80, OAC 165:10-21-82, OAC 165:10-21-82.2 and OAC 165:10-21-82.3 in Subchapter 21, Applications for Tax Exemptions, were made to conform to 68 O.S. §1001 and amendments thereto in Enrolled House Bill No. 1488 (2011) and Enrolled Senate Bill No. 885 (2011). Amendments to OAC 165:10-11-3 were made in accordance with the decision of the Oklahoma Court of Civil Appeals in case number 109,015, *Hoover v. Boone Operating, Inc.* Other rules were amended in an effort to update, standardize and streamline language and procedures appearing in OAC 165:10, as well as to address changes in technology, especially with respect to horizontal drilling.
CONTACT PERSON:
Susan Dennehy Conrad, Deputy General Counsel, Office of General Counsel, Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, PO Box 52000, Oklahoma City, OK 73152-2000, telephone: (405) 521-3939.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA CORPORATION COMMISSION, WESTERN REGIONAL SERVICE OFFICE, JIM THORPE OFFICE BUILDING, 2101 NORTH LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA, AT THE OKLAHOMA CORPORATION COMMISSION, EASTERN REGIONAL SERVICE OFFICE, KERR BUILDING, 440 SOUTH HOUSTON, SUITE 114, TULSA, OKLAHOMA, AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT

TO 75 O.S., SECTION 255(B):

SUMMARY:

OAC 165:10-1-2 is amended to add definitions for the phrases "hydraulic fracturing operations" and "hydrologically sensitive area;" OAC 165:10-1-4 to update the list of effective dates for OAC 165:Chapter 10 rulemakings; OAC 165:10-3-4 regarding approval of certain cementing operations by Commission representatives; OAC 165:10-3-10 to require operators to submit information on chemicals used in hydraulic fracturing operations; OAC 165:10-3-28 regarding horizontal drilling; OAC 165:10-5-5 concerning notice pertaining to proposed horizontal injection and disposal wells; OAC 165:10-7-5 regarding reporting nonpermitted discharges of deleterious substances; OAC 165:10-7-16 concerning closure of noncommercial pits and to delete a reference as to how hydrologically sensitive areas are determined; OAC 165:10-7-19 regarding stockpiling of cuttings associated with one time land applications of water-based fluids from earthen pits and tanks; OAC 165:10-7-20 to delete the definition of the phrase "hydrologically sensitive area" with respect to noncommercial pits used for temporary storage of saltwater, and OAC 165:10-7-24 concerning disposal options for waste materials.

OAC 165:10-9-1 is amended to delete a reference to how hydrologically sensitive areas are determined with respect to commercial pits and to refer to new special area rule OAC 165:10-29-3 prohibiting commercial pits in designated areas associated with the Rush Springs Sandstone Groundwater Basin; OAC 165:10-9-2 regarding commercial soil farming; OAC 165:10-9-3 regarding signs posted at commercial disposal well surface facilities; OAC 165:10-9-4 concerning commercial recycling facilities; OAC 165:10-11-3 regarding liability for plugging wells; OAC 165:10-21-21, OAC 165:10-21-22, OAC 165:10-21-36, OAC 165:10-21-45, OAC 165:10-21-55, OAC 165:10-21-58, OAC 165:10-21-78, OAC 165:10-21-80, OAC 165:10-21-82, OAC 165:10-21-82.2 and OAC 165:10-21-82.3 in Subchapter 21, Applications for Tax Exemptions, in accordance with 68 O.S. §1001 and amendments thereto in Enrolled House Bill No. 1488 (2011) and Enrolled Senate Bill No. 885 (2011), and a new special area rule OAC 165:10-29-3 is added to prohibit commercial pits in designated areas associated with the Rush Springs Sandstone Groundwater Basin. The full text of these rules may be obtained by interested parties at the Oklahoma Corporation Commission's Oklahoma City Court Clerk's Office located in the Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma, 73105, at the Commission's Tulsa Court Clerk's Office located in the Kerr Building at 440 South Houston, Suite 114, Tulsa, Oklahoma, 74127, and on the Commission's website at http://www.occeweb.com.

[OAR Docket #12-665; filed 5-22-12]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS

[OAR Docket #12-635]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Intrastate Motor Carriers
Part 1. Applying for a License
165:30-3-1. Obtaining a license [AMENDED]
165:30-3-3. License and certificate renewals [AMENDED]
Part 3. License Requirements
165:30-3-11. Insurance [AMENDED]
165:30-3-17. Markings [AMENDED]
Part 9. Violations
165:30-3-71. Loading capacity - Safety compliance [AMENDED]
165:30-3-75. Advertising [AMENDED]
Part 11. Miscellaneous
165:30-3-92. Pollution abatement [AMENDED]
Subchapter 7. Procedural Rules
165:30-7-6. Applications and requests [AMENDED]
165:30-7-12. Revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration [AMENDED]
165:30-7-15. Operations conducted under government contract [NEW]
Subchapter 10. Interstate Motor Carriers
Part 7. Interstate Motor Carriers Operating in Intrastate Commerce
165:30-10-45. Miscellaneous [AMENDED]
Subchapter 13. Intrastate Household Goods Certificates
Part 1. Obtaining Authority
165:30-13-2. Obtaining a household goods certificate [AMENDED]
Part 5. Conducting Operations
165:30-13-20. Estimates [AMENDED]
165:30-13-26. Bill of Lading [AMENDED]
Subchapter 15. Intrastate Private Carriers
Part 3. Obtaining a Private Carrier License and License Requirements
165:30-15-4. Obtaining a license [AMENDED]
Subchapter 16. Interstate Private Carriers
165:30-16-1. ~~Markings~~USDOT numbers and markings [AMENDED]
165:30-16-11. Violations [NEW]
Subchapter 19. Registration Pursuant to the International Registration Plan
165:30-19-3. Registration [AMENDED]
165:30-19-4. Title requirements and proof of ownership [AMENDED]
165:30-19-19. Trip permits and hunters permits [AMENDED]
Subchapter 21. International Fuel Tax Agreement
165:30-21-4. Trip permits [AMENDED]
165:30-21-16. Interest [AMENDED]

AUTHORITY:

Oklahoma Corporation Commission
Oklahoma Constitution, Article IX, §18
The Motor Carrier Act of 1995, specifically 47 O.S. §230.24
The Trucking One-Stop Shop Act, specifically 47 O.S. §1166
The Motor Fuel/Diesel Fuel Importer for Use Tax Code at 68 O.S. §§ 601 et seq.
47 O.S. §1120

DATES:

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December 2, 2011 through February 24, 2012.

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March 6, 2012

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March 6, 2012

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March 15, 2012

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March 15, 2012

Submitted to the Senate:

March 15, 2012

Gubernatorial approval:

April 27, 2012

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2012

Final Adoption:

May 15, 2012

Effective Date:

July 1, 2012

SUPERSEDED EMERGENCY ACTIONS:

None

INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

The adopted rules were promulgated to conform Title 165, Chapter 30 with the related provisions of the International Registration Plan and with those of the International Fuel Tax Agreement. The adopted rules clarify certain provisions of the existing rules to facilitate easier compliance.

CONTACT PERSON:

Natasha Scott, 522-1638

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 1. APPLYING FOR A LICENSE

165:30-3-1. Obtaining a license

(a) No intrastate motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers or property for hire without first obtaining from the Commission a license as provided in this Section. A license issued under this Subchapter shall not include transportation as a motor carrier of household goods. Motor carriers of household goods must comply with Subchapter 13 of this Chapter.

(1) An applicant for a license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Chapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Chapter shall be met within thirty (30) days from date of receipt of a motor carrier license application by the Commission. Failure to comply will result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for intrastate operations shall be issued until after the applicant has provided a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Chapter and all applicable state statutes; and has purchased an appropriate number of identification devices.

(6) The ~~notarized~~ application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business or a terminal in Oklahoma).

(E) Declaration of its USDOT number. Motor carriers without a USDOT number must obtain a USDOT number from FMCSA or the Commission prior to a license being issued.

(F) Declaration of its USDOT safety rating and safety compliance.

(G) Declaration of size and weight compliance.

(H) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(I) A description of all terminal and dock facilities.

(J) Declaration the applicant is in full compliance with all other state laws, rules and regulations.

(K) Any other information the Commission deems pertinent.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers.

(8) A motor carrier desiring to modify its license operations shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (5) and (6)(D) -(I) of this subsection.

(9) A copy of the current license under which a motor carrier operates shall be carried at all times in each power unit by the motor carrier.

(b) A motor carrier engaged in intercorporate hauling shall be subject to this Subchapter.

(c) Motor carrier operations, other than motor carriers of passengers, are exempt from this Subchapter when:

(1) Conducted strictly within a municipality, or

(2) Conducted by a federal, state or local government.

(d) Motor carriers of passengers shall be exempt from this Subchapter when:

(1) Operating a taxicab, as defined by 47 O.S. § 1-174, wholly within a municipality, provided the operator of the taxicab is licensed by the municipality in which business is conducted;

(2) Operating a bus, as defined by 47 O.S. § 1-105, not between two or more cities or towns, provided the operator of the bus is licensed by a municipality in which business is conducted.

(e) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all other requirements for the intrastate license have

been met. Applicant must provide a written request for the provisional intrastate license to the Director of the Transportation Division. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(f) The Commission may grant or deny the motor carrier license application or may impose conditions, stipulations and limitations on the license. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within 30 days of receipt of a complete application.

(g) No intrastate motor carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) All proceedings subsequent to the application, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

165:30-3-3. License and certificate renewals

(a) Any motor carrier desiring to continue intrastate motor carrier operations as granted in its license or certificate, shall, prior to the date of license or certificate expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed, attested to ~~and notarized~~ as follows:

(1) Application of sole proprietorship must be signed by owner.

(2) Application of partnership must be signed by one of the partners.

(3) Application of corporation must be signed by an officer.

(b) All intrastate motor carrier licenses and certificates issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year, but may be renewed for up to three years. Carriers renewing licenses or certificates for more than one year must maintain all requirements of that license or certificate in order for the license or certificate to be valid.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) A renewal application may be set for hearing at the discretion of the Commission for good cause.

(e) An intrastate motor carrier desiring to renew its license or certificate should apply for renewal of its license or certificate a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license or certificate has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate motor carrier license or certificate shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate motor carrier operations shall be performed under an expired motor carrier license or certificate.

PART 3. LICENSE REQUIREMENTS

165:30-3-11. Insurance

(a) No motor carrier whose principal place of business is in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid primary bond or insurance policy issued by an insurer authorized or approved by the Oklahoma Insurance Department. No motor carrier whose principal place of business is not in Oklahoma shall conduct any operations in this State unless such operations are covered by a valid bond or insurance policy issued by an insurer licensed or approved by the insurance regulatory authority of the state of their principal place of business or the Oklahoma Insurance Department. No holder of an authority shall conduct any operations before a proper certificate of insurance(s) has been filed with, and approved by the Commission. A surety bond containing all obligations provided by this Section may be substituted for an insurance policy.

(b) Every motor carrier shall file with, and must be approved by, the Commission a certificate on Form E or G certifying that there is in effect a valid bond or insurance policy covering operations in Oklahoma to protect the public against loss of life, injury, property damage, and including environmental restoration in minimum amounts, of combined single limits, for bodily injuries to, or death of all persons injured or killed in any accident, and loss or damage in any one accident to property or others (excluding cargo). Minimum liability insurance limits as set forth in 49 CFR Part 387 shall also be applicable to intrastate operations unless otherwise specified in subsections (b)(1)-(4).

(1) Motor carriers of property using vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more:

(A) Transporting <u>property,</u> non-hazardous commodities or transporting hazardous waste, materials or substances not listed in 49 CFR Part 387.9 - $750,000.

(B) <u>Transporting deleterious substances - $750,000.</u>

<u>(C)</u> Transporting hazardous waste, materials, or substances- as required by 49 CFR, Part 387.9.

(2) Motor carriers of property using only vehicles with a GVWR under 10,000 pounds:

(A) Transporting commodities not listed in (B) of this paragraph- $300,000.

(B) Transporting hazardous waste, materials or substances - as required by 49 CFR Part 387.9.

(3) Motor carriers of the following types of property, materials, and products (also known or identified as restricted property) - $350,000:

(A) Sand, rock, gravel, rip-rap, aggregate or dirt.

(B) Asphaltic mixtures and similar mixtures and compositions (excluding concrete and concrete mixtures) used in road, highway and other ground surface paving.

(C) Unprocessed forestry products and by products thereof not in a finished state.

(D) Unprocessed agricultural commodities.

(E) Ordinary livestock.

(4) Motor carriers of passengers (seating capacity includes the driver):

(A) Taxicab service utilizing vehicles having a seating capacity of ~~less than 7~~ six (6) or less passengers not operated on a regular route or between specified points - $100,000.

(B) Utilizing vehicles having a seating capacity of 15 passengers or less, other than as described in (A) of this paragraph - $1,000,000.

(C) Utilizing vehicles having a seating capacity of 16 or more passengers - $5,000,000.

(5) Motor carriers of household goods - $750,000.

(c) Every motor carrier of freight, except a motor carrier of household goods, shall be exempted from filing proof of cargo liability insurance. Every motor carrier of household goods shall file with, and be approved by, the Commission an additional certificate on Form H or J that there is in effect a valid bond or insurance policy issued by a State Insurance Department authorized provider as security required to compensate shippers or consignees for loss of or damage to property coming into the motor carrier's possession. Security in the amount of at least Five Thousand ($5,000) Dollars is required to cover loss of or damage to property carried on any one motor vehicle in connection with its transportation service and in the amount of $10,000 for the loss of or damage to or aggregate of losses of or damages to property occurring at any one time and place.

(d) Motor carriers of hazardous materials or hazardous waste shall maintain a properly executed Form MCS-82 or MCS-90 in effect as required by 49 CFR 387.

(e) The Commission may by order grant authority to operate or to continue operating as a motor carrier conditional upon carrying insurance coverage in amounts larger than prescribed by (b) of this Section.

(f) No certificate of insurance or surety bond filed with the Commission pursuant to this Section shall be cancelled, unless the authorization to conduct operations has been canceled, except after thirty (30) days written notice made to the Commission, on Form K or L, which notice shall be effective only upon actual receipt thereof by the Commission.

(g) Insurance certificates or surety bonds may be cancelled without the thirty (30) days written notice on Form K or L only when the authorization to operate has previously expired or canceled, the motor carrier provides an affidavit stating no operations have been conducted and the effective date of the cancellation notice is not before the date the cancellation notice is received in the Commission.

(h) Insurance certificates or surety bonds not properly cancelled or expired shall be considered expired one year after the motor carrier's authorization to operate has been cancelled or expired.

(i) Insurance certificates or surety bonds approved by this Commission shall be replaced by more recent insurance certificates or surety bonds. The liability of the retiring insurer or surety shall be terminated as of the effective date of the replacement insurance certificate or surety bond provided the replacement is approved by this Commission.

(j) No certificate of insurance shall be filed with the Commission which contains a provision to the effect that liability thereunder may be limited or avoided because of the culpability, the recklessness, or the condition of the driver of the vehicle involved or any other restriction relating to the driving or operation of the vehicle.

(k) Every certificate of insurance filed with the Commission shall provide that the public is protected from damage sustained through operations of any and all vehicles operated by the motor carrier insured, whether or not listed or identified in the policy; and that liability is not limited by the description of any particular vehicle or route which may be traveled by the motor vehicle in transporting passengers or property under the certificate or permit or license.

(l) Every certificate of insurance filed with the Commission shall be executed by an officer or authorized agent of the insurance company; and if executed by an agent, a copy of his written authority or power of attorney to execute the same shall be attached to the certificate.

(m) When insurance is provided by more than one insurer in order to aggregate security limits for motor carriers, a separate insurance certificate and endorsement is required of each insurer.

(n) Every motor carrier shall maintain in force at all times all insurance required by state laws and by this Section. Failure for any cause to maintain any required insurance in force shall automatically and without notice suspend the license or authority of a motor carrier until proper insurance is filed.

(o) Whenever the license or authority of a motor carrier is suspended for failure to maintain in force insurance required by this Section, the carrier must file, within sixty (60) days after commencement of the suspension, proper certificate(s) of insurance as provided in this Section and a sufficient showing, by affidavit or otherwise, that no operations were conducted during the period that insurance was not in force (TDF 18).

(p) Whenever a motor carrier fails to provide proper certificates of insurance within sixty (60) days after suspension thereof as provided in this Section, the motor carrier's certificate or permit, license, or other authority shall be cancelled by operation of law, and without notice. A certificate or permit, license, or other authority so cancelled shall not be reinstated or otherwise made operative except upon proper showing, at a hearing, that the motor carrier was actually covered by proper insurance during the suspension or cancellation period, and that failure to file with the Commission was not due to the motor carrier's own negligence.

(q) Any motor carrier conducting operations under a suspended or cancelled authority, shall not be eligible to apply for a new authority for a period of not less than one hundred eighty (180) days. The one hundred eighty (180) day period shall be determined by either the date insurance on file expires or the date a violation is discovered, whichever occurrence is later.

(r) A person may not require indemnification from a motor carrier as a condition to the following:

(1) The transportation of property by the motor carrier.

(2) Entrance onto property by the motor carrier for the purpose of loading, unloading or transporting property.

(3) Subsection (r)(2) of this Section does not apply to a claim arising from damages or losses from the wrongful or negligent act or omission of the motor carrier.

(s) Insurance filings and cancellation notices required by this Chapter may be accepted electronically as set forth by the Transportation Division. Electronic insurance filings and cancellations shall be held to the same standard and carry the same force and effect as if accepted through traditional paper filings.

165:30-3-17. Markings

(a) Every ~~intrastate~~ motor carrier shall obtain and display a USDOT number.

(b) Each motor vehicle operated by a motor carrier shall be properly marked. The markings shall be in compliance with the Federal Motor Carrier Safety Regulations, 49 CFR Part 390.21 (b)-(d). A motor carrier operating under a DBA or trade name must first list the DBA or trade name on the carrier's operating authority.

(c) If the motor carrier's USDOT number is ~~issued by the Commission~~designated as intrastate only, the letters OK must follow the carrier identification number. ~~Motor carriers with an intrastate USDOT number will notify the USDOT and the Commissionof its intent to engage in interstate operations prior to dropping the OK from its USDOT number.~~

(d) A carrier shall immediately notify the Commission when filing changes on a USDOT identification report (MCS-150). This notification shall occur when a carrier updates its USDOT identification report (MCS-150) resulting in a change in name, dba, address, interstate to intrastate classification, intrastate to interstate classification, or any other modification that may affect the carrier's intrastate authority or permits issued by the Commission.

(~~d~~e) In the event a power unit is transferred or sold by a motor carrier, the carrier is responsible for removing the markings from the unit.

PART 9. VIOLATIONS

165:30-3-71. Loading capacity - Safety compliance

(a) No intrastate motor carrier or private carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the size and weight limits established by the State Statutes. Factors to be considered when an application for suspension or revocation is made are set forth in subsection (d)(1) through (5).

(b) No person, firm or corporation shall assist in the commission of such overweight violation or cause a motor vehicle to be overloaded.

(c) No intrastate motor carrier shall operate or allow any employee, agent or any other person to operate a motor vehicle owned or leased to it in violation of the safety standards established by the state statutes.

(d) A compliance audit may be conducted by the Commission and will be based upon, but not limited to the following:

(1) Frequency of violations.
(2) Pattern of violations.
(3) Fleet size.
(4) Type of operation.
(5) Overweight excess.

(e) Motor carriers obtaining a permit authorizing the operation of an oversize or overweight vehicle shall maintain a copy of the permit in accordance with 165:30-3-33.

(f) When performing an overweight audit, a certified load ticket or scale ticket shall be considered the actual weight of the vehicle or vehicle combination unless other reliable evidence is presented.

165:30-3-75. Advertising

(a) Any person who advertises to perform intrastate transportation services for which he does not hold a proper certificate or permit or license shall be in violation of this Section and subject to the penalties prescribed for contempt of the Commission.

(b) A motor carrier authorized to transport passengers must ensure all advertisements contain the motor carrier's USDOT number that is linked to the motor carrier's passenger authority license.

PART 11. MISCELLANEOUS

165:30-3-92. Pollution abatement

(a) All transportation by motor vehicle of deleterious substances including salt water, brines, liquid mud, acids, or any other fluids used in the drilling, completion, operation or reworking of an oil or gas well and/or any fluids generated as a by-product or resulting from the production of an oil or gas well or the operation of a disposal facility or facility where equipment is cleaned shall be conducted in such a manner that prevents any pollution to the surface of the earth or any fresh water bearing formation. Pollution of surface water or subsurface water is hereby prohibited.

(1) This Section shall not be construed as modifying the rights, obligation or duties of any person under the law of this State, or any order, rule or regulation of the Oklahoma Water Resources Board, State Department of Health, Department of Environmental Quality, Oklahoma Wildlife Conservation Commission, State Board of Agriculture, Department of Pollution Control, Department of Public Safety or any other agency of this State with respect to the pollution of fresh water.

(2) When a complaint is received against any person or company alleging pollution as prohibited in this Section, or field investigations by Commission staff or other regulatory agencies indicates prohibited pollution occurring, the Transportation Division shall immediately initiate such action as is necessary or appropriate to abate the pollution.

(b) No transporters of fluids mentioned in this Section shall use an earthen pit for any storage of said fluids or the washing or otherwise cleaning of the inside of the trailer or container used to transport or store such fluids.

(c) Any truck yard pit used for the temporary storage of fluids from washing or cleaning activities of equipment used in the transportation of fluids mentioned in this Section shall not be constructed or enlarged until application (TDF 15) has been made to the Transportation Division, and approval received.

(d) An application to construct or enlarge a truck yard pit shall be accompanied by the filing fee as prescribed by Commission rule, contain an original ~~notarized~~ signature and reflect the following information:

(1) Applicant's name and trade name (if any).
(2) Mailing and physical address of applicant.
(3) USDOT number of applicant.
(4) Telephone and facsimile numbers of the applicant.
(5) Contact person.
(6) Email address of the applicant, if any.
(7) Legal location of the truck yard pit.
(8) Size of the truck yard pit.
(9) Soil conditions in the pit area.
(10) Depth of subsurface fresh water.
(11) Distance to the nearest surface fresh water.
(12) Additional information as required.

(e) If the applicant is not the landowner, the application must additionally be accompanied by the following:

(1) The name of the landowner.
(2) The mailing and physical addresses of the landowner.
(3) Telephone and facsimile numbers of the landowner.
(4) Email address of the landowner, if any.
(5) A copy of the lease agreement.
(6) Written permission of the landowner for the application to construct or enlarge a truck yard pit.

(f) Fluids generated from washing/cleaning operation in a truck yard shall be collected into a plastic lined pit of at least sixty (60) mls, concrete pit whose mechanical integrity is intact, or a metal container with such generated fluids to be taken to a licensed disposal facility. No pit shall be constructed or maintained as to collect outside runoff water, and the fluid level in such pit must be maintained at all times at least thirty six (36) vertical inches below the lowest point on the embankment.

(g) At any time the owner or operator of the truck yard pit changes or the owner or operator changes its name, the Transportation Division must be notified immediately in writing by the authorized pit owner or operator.

(h) No truck yard pit shall be abandoned without prior notification to the Transportation Division using the form TDF 15. Any such pit abandoned will be emptied and leveled within thirty (30) days of abandonment. The pit operator shall ensure the pit location is inspected by the Transportation Division prior to the pit being emptied and leveled,

(i) A truck yard pit shall be emptied and cleaned for the purposes of inspection, at the discretion of the Transportation Division Director.

(j) The Commission, by order, may close any truck yard pit to be found in violation of this Section.

(k) A truck yard pit permit may be transferred to another person upon approval by the Transportation Division. Application for transfer should be submitted on TDF 15T, and shall tender with the application a fee as prescribed by law or by the Commission rule.

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-6. Applications and requests

(a) All intrastate motor carrier, private carrier, deleterious, hazardous waste, registration and fuel permit applications must bear an original acceptable signature of the applicant. The applicant must be a legal entity with an optional single trade name listed that is not a legal entity. If signed by an attorney or agent in lieu of the applicant, a copy of the power of attorney must be attached to the application.

(b) Acceptable signatures on applications for authority are as follows:

(1) Sole proprietorship - sole proprietor.
(2) Partnership - one of the partners.
(3) Corporation - one of the officers or directors.
(4) Limited liability company - the manager.

(c) A name change relating to a partnership or a request to cancel a partnership must be signed by all partners.

(d) All authority applications filed by an applicant which does not maintain a terminal in Oklahoma must file and maintain a current listing of a valid Oklahoma process agent on behalf of the applicant.

(e) All ~~authority~~ applications shall contain the USDOT number of the operating motor carrier. Applications for registration shall additionally contain the USDOT number of the owner of each vehicle, and the registrant.

(f) An application may not be processed when the motor carrier or the motor carrier responsible for safety has not updated its USDOT number within the prior twenty-four (24) months or twelve (12) months if an apportioned license application. Failure to update the USDOT number may subject the authority to revocation.

(~~f~~g) Failure to properly complete any application may result in delay or denial of the relief sought.

(~~g~~h) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.

(~~h~~i) Interstate authority, fuel permits and registration cannot be issued to a motor carrier whose ability to operate in interstate commerce has been denied or revoked.

(j) If a fee is required for an application, and the funds are returned unpaid, any document or privilege granted as a result of that application shall be immediately revoked without notice. The document or privilege shall be reinstated provided valid payment is received in a timely manner.

165:30-7-12. Revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration

(a) The Commission may revoke, suspend or deny the issuance of any Commission issued motor carrier or commercial motor vehicle license, permit, certificate or registration issued pursuant to the Commission's jurisdiction for any of the following reasons:

(1) Violation of applicable state law.
(2) Violation of Commission rules.
(3) Failure to observe or fulfill the conditions upon which the license, permit, certificate or registration was issued.
(4) Nonpayment of any delinquent tax, fee or penalty to the Commission or to the State of Oklahoma.

(5) Nonpayment of a uniform base state program delinquent tax, fee or penalty to a state or province participating with the Commission in that program.

(6) Placed out of service by a federal or state agency.

(b) A motor carrier or registrant who wishes to contest a revocation, suspension or denial of issuance of motor carrier license, permit, certificate or registration is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5.

165:30-7-15. Operations conducted under government contract

(a) Motor carriers conducting intrastate operations under contract with a governmental entity are exempt from Subchapters 3, 13 and 15 of this Chapter.

(b) Persons conducting intrastate operations in furtherance of a governmental contract for the building or maintenance of roads, bridges, turnpikes or other road building projects are exempt from Subchapters 3 and 15 of this Chapter.

(c) In an effort to assist law enforcement in identifying operations exempt as a result of a governmental contract, documentation should be carried in each vehicle operated under the contract. The documentation may consist of a complete copy of the contract or a copy of a portion of the contract(s) that contains the following information:

(1) The government entity.

(2) The contractor (which should also be the motor carrier).

(3) A description of the project.

(4) The project beginning date.

(5) The project ending date or project time span.

(d) A subcontractor exempted under (b) of this Section, should in addition to the documentation listed in (c) of this Section, additionally carry a copy of the contract, or a portion of the contract, between the contractor and the subcontractor that clearly establishes the operations being performed are within the scope of the governmental contract.

SUBCHAPTER 10. INTERSTATE MOTOR CARRIERS

PART 7. INTERSTATE MOTOR CARRIERS OPERATING IN INTRASTATE COMMERCE

165:30-10-45. Miscellaneous

(a) An interstate motor carrier with valid intrastate authority issued pursuant to OAC 165:30-3 or OAC 165:30-15, must maintain liability insurance on file as prescribed in OAC 165:30-3-11 or OAC 165:30-15-6, to retain its intrastate authority.

(b) If a motor carrier's authorization to operate interstate is canceled, whether voluntary or involuntary, the motor carrier must immediately make application to the Commission for intrastate authority renewal and identification devices. Failure to make application within sixty (60) days shall cause the motor carrier's intrastate license to expire.

~~(c) Power units operating intrastate only, under an intrastate for hire or private carrier license that were excluded from the UCR fee, must obtain and display a current year identification device.~~

SUBCHAPTER 13. INTRASTATE HOUSEHOLD GOODS CERTIFICATES

PART 1. OBTAINING AUTHORITY

165:30-13-2. Obtaining a household goods certificate

(a) No motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the intrastate, including intracity, transportation of household goods for hire without first obtaining from the Commission a certificate as provided in this Section.

(1) An applicant for a certificate shall file with the Commission a written application on the appropriate form prescribed by the Commission (MCF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a PIN, which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the authority or for additional authority by the same applicant shall be filed under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for authority. Each subsequent application shall also bear a sub-number in sequence.

(3) A certificate shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a certificate does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited except pursuant to a certificate issued by the Commission, and only after all requirements have been met, and identification devices have been obtained.

(5) The application for a household goods certificate shall ~~be notarized, and shall~~ contain the following information:

(A) Name of applicant, trade name, mailing address, principal place of business address which shall be the registered address for purposes of this Subchapter, telephone number and domicile county of the applicant. The applicant's name must be a legal entity. A trade name or "doing business as" (DBA) may be designated, but cannot be a corporate name or LLC or LLP or another organized entity. If the applicant is an organized entity, a copy of the certificate of incorporation or other instrument as issued by the Oklahoma Secretary of State's Office shall be attached to the application.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors and listing the addresses of each.

(C) Declaration of its USDOT number. Carriers without a USDOT number must apply for a USDOT number. A USDOT number must be issued to the applicant prior to a certificate being issued.

(D) Declaration of its safety rating and provide a safety summary report.

(E) A size and weight summary report.

(F) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(G) A description of all terminal and dock facilities to be utilized for household goods transportation operations. If no facilities exist within the state, the address where vehicles will be parked must be provided.

(H) The name and address of a process agent for Oklahoma must be filed and maintained for any applicant that does not maintain a physical address in Oklahoma.

(I) A declaration that the applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(b) Every person operating as a motor carrier of household goods pursuant to this Subchapter shall obtain a copy of this Chapter and be familiar with its content as it pertains to motor carriers of household goods.

(c) The Commission may consider any written protests or written complaints filed prior to granting or renewing a household goods certificate. If the Commission elects not to grant or renew a household goods certificate, the application shall be set for public hearing in accordance with Commission rules. At the hearing, the applicant shall have the burden of establishing it has the ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma.

(d) After the hearing, the Commission may grant or deny the application in whole or in part; or may impose conditions, stipulations and limitations on the authority as stated in the order.

(e) Applicant may be issued a provisional household goods certificate not to exceed ninety (90) days from the date the application is filed, provided all requirements, with the exception of the educational compliance requirements, for the certificate have been met. Applicant must provide a written request for the provisional certificate. If the provisional certificate is issued, a copy of the provisional certificate must be carried in each vehicle operated by the Applicant.

(f) A certificate shall be valid for one year from date of issuance. Applicants for renewal of a certificate shall comply with OAC 165:30-3-3.

(g) A copy of the current certificate under which a carrier operates shall be carried at all times in each power unit by the motor carrier.

(h) A motor carrier of household goods engaged in intercorporate hauling shall be subject to this Subchapter.

(i) No household goods certificate shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(j) An intrastate motor carrier of household goods may additionally engage in intrastate for-hire transportation of property without an intrastate motor carrier license, but may not engage in the intrastate transportation of passengers, deleterious substances or hazardous materials without complying with Subchapter 3 of this Chapter.

(k) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

PART 5. CONDUCTING OPERATIONS

165:30-13-20. Estimates

(a) Household goods carriers must provide written binding or non-binding estimates.

(b) The written estimate must clearly provide:

(1) Whether it is a binding or a non-binding estimate. Non-binding estimates must be based upon a reasonably accurate estimate of the charges for transportation and accessorial services to be performed.

(2) The form of payment that will be honored at delivery such as cash, certified check, money order, type of credit card, etc.

(3) The date of the estimate.

(4) The signatures of the carrier and of the shipper.

(5) If the household goods carrier's charges will be based upon inventoried items, a written itemized inventory for each shipment must be prepared and attached to the bill of lading.

(6) The shipment will be transported at the released value of $.60 per pound, at no additional cost to the shipper, unless the shipper elects full value protection.

(c) Household goods carriers assessing charges based upon weight must obtain weight tickets of the vehicle before loading and after loading. The weight tickets must include:

(1) The complete name and location of the scale.

(2) The date of each weighing.

(3) The signature of the weigh master.

(4) The identification of the weight entries as being the tare, gross or net weights.

(5) The last name of the shipper as it appears on the bill of lading (if the vehicle is loaded).

(6) The bill of lading number.

(d) <u>In the event of a binding estimate based upon weight, the shipper may elect to waive the weighing of the vehicle before loading and/or after loading, but such waiver must be specifically noted and initialed on the written estimate.</u>

<u>(e)</u> A shipper shall be granted the ability to observe the vehicle weighing or re-weighing as requested.

(~~e~~f) Household goods carriers assessing charges not based upon weight shall clearly specify the parameters for which charges will be assessed.

(~~f~~g) Services performed under an estimate are subject to the 110% rule, which means the household goods carrier must deliver the goods once the shipper pays 110% of the estimated charges. The 110% rule still applies to partial shipments when a prorated percentage is paid.

(~~g~~h) Additional charges may be added based upon mutual agreement of the carrier and the shipper. These charges must be in writing and signed by both parties. Additional charges may not be added after the goods are loaded, except as provided for in OAC 165:30-13-28.

165:30-13-26. Bill of Lading

(a) No household goods shipments may be loaded until a valid bill of lading has been prepared. A bill of lading must contain:

(1) Date.

(2) The identification number for the shipment (may be a bill of lading number).

(3) The household goods carrier's information as follows:

(A) Legal name and dba (if any).

(B) Mailing address and physical address (if different from mailing address).

(C) Telephone number.

(D) USDOT number as linked to the intrastate household goods certificate.

(E) Other motor carrier information, as required in this subsection, that will participate in the transportation of the shipment.

(4) The shipper's information as follows:

(A) Name.

(B) Mailing address and physical address (if different from mailing address).

(C) Telephone number.

(5) Shipment information as follows:

(A) Agreed upon pick up date and delivery date or agreed period of the entire move.

(B) Origin and destination of shipment.

(C) The inventory list signed by both parties or an inventory list waiver signed by the shipper.

(D) Identification information of the vehicle on which the shipment is loaded.

(6) Payment and charges as follows:

(A) Denote if the estimate was binding or non-binding.

(i) If non-binding, a reasonably accurate estimate of the amount of the total charges, the maximum amount (subject to the 110% rule) that must be paid at the time of the delivery to relinquish possession of the shipment.

(ii) If binding, the amount of charges that must be paid to relinquish possession of the shipment along with the terms of payment.

(B) The form of payment that will be honored upon delivery (which must be the same as shown on the estimate).

(C) The terms and conditions for payment of the total charges, including notice of any minimum charges.

(D) The maximum amount of payment that will be required at the time of delivery to obtain possession of the shipment.

(E) The declared value of the shipment or, if the shipper does not select the full value protection, the released value of the shipment.

(F) The cost to the shipper for full value shipment valuation, if selected by the shipper.

(G) Evidence of any insurance coverage sold to or procured for the shipper from an independent insurer, including the cost incurred for the insurance.

(H) A complete description of any accessorial services ordered and the charges associated with the services.

(I) Whether the shipper will be notified in advance of the charges before delivery. If yes, the shipper must provide fax number or address where the notifications are to occur and via method (fax, email, overnight courier, certified mail, etc.) as well as any additional charges associated with the notification.

(7) Acknowledgments and Signatures as follows:

(A) In the event the motor carrier of household goods reasonably believes an accessorial service is needed to safely transport a shipment, and the shipper refuses to pay for such a service, the carrier must refuse to accept the shipment and note this on the bill of lading.

(B) Acknowledgment by the shipper that the consumer protection information "Moving in Oklahoma" was received at the time or prior to receipt of the written estimate.

(C) Specification of the selection of the released rate of sixty cents (.60) per pound per article which is considerably less than the value of most articles transported or the full value protection with declared value of shipment specified.

(D) Signature of carrier.

(E) Signature of shipper.

(b) A copy of the bill of lading must be provided to the shipper at the time of the shipper's signature. The bill of lading must be carried in the vehicle and presented to any law enforcement officer upon request.

(c) A bill of lading may be amended only prior to the loading of the shipment and upon mutual agreement between the carrier and the shipper except as provided for in OAC 165:30-13-28. The amendment must be signed by both parties.

(d) The bill of lading may not contain any language purporting to release or discharge the household goods carrier from liability, but may include a statement the property was received in apparent good condition except as noted on the delivery receipt.

SUBCHAPTER 15. INTRASTATE PRIVATE CARRIERS

PART 3. OBTAINING A PRIVATE CARRIER LICENSE AND LICENSE REQUIREMENTS

165:30-15-4. Obtaining a license

(a) No intrastate private carrier, utilizing equipment with an actual weight, registered weight or combination weight or GVWR/GCWR in excess of 26,000 pounds when the trailer's GVWR is greater than 10,000 pounds, shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of property without first obtaining from the Commission a license as provided in this Section. A private carrier license is not required for a bona fide farmer transporting commodities from farm to market or market to farm; registered and valid non-profit organizations or any private carrier operating equipment leased or rented from a company that leases or rents vehicles on a commercial scale, provided the lease or rental contract is for thirty-one (31) days or less and a copy of the contract is carried in the vehicle. A license issued under this Subchapter shall not include transportation as a for-hire motor carrier. For-hire motor carriers must comply with Subchapter 3 and/or Subchapter 13 of this Chapter.

(1) An applicant for a private carrier license shall file with the Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number ("PIN"), which shall be the permanent identification number for all matters relating to the license granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any private carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Subchapter shall be met within sixty (60) days from date of application recommending the license be issued. Failure to comply may result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for private carrier intrastate operations shall be issued until applicant has a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Subchapter and all applicable state statutes.

(6) The ~~notarized~~ application shall require the following:

(A) Name, a single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all officers, if any, and listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business in Oklahoma).

(E) Declaration of its USDOT number, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months. Carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission.

(F) A size and weight summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.

(G) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(H) A description of all terminal, dock or motor pool facilities.

(I) A declaration that the Applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers and private carriers.

(8) A private carrier desiring to modify its license shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (6)(D)-(G) of this subsection.

(9) A copy of the current license under which a carrier operates shall be carried at all times in each power unit by the private carrier.

(b) Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is

filed, provided all requirements, with the exception of the educational compliance requirements, for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

(c) No intrastate private carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(d) An intrastate private carrier additionally conducting intrastate motor carrier operations under a valid motor carrier license, certificate or permit need not obtain a private carrier license.

(e) If a hearing is held, the applicant shall have the burden of establishing its ability to conduct operations in a safe and reasonable manner and in compliance with all applicable rules and laws of the State of Oklahoma and that it has furnished or will furnish proper proof of all insurance required by this Chapter and all applicable state statutes. The Commission may grant or deny the application or may impose conditions, stipulations and limitations on the license.

(f) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

SUBCHAPTER 16. INTERSTATE PRIVATE CARRIERS

165:30-16-1. USDOT numbers and markings~~Markings~~

All motor carriers engaged in interstate private commerce shall comply with all provisions of OAC 165:30-10-1~~49 C.F.R. 390.21 with regard to markings~~.

165:30-16-11. Violations

(a) Every private motor carrier, their employees or any other person who violates or fails to comply with or procures, aids or abets in the violation of any provision of law or of any requirement of this Chapter; or who fails to obey, observe or comply with any order, decision, rule or regulation, direction, demand or requirement, or any part or provision thereof, of the Commission, or who procures, aids, or abets any corporation or person in its refusal or willful failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation, or part of provision thereof, after notice and hearing, is guilty of contempt of the Commission and is subject to a fine not to exceed Five Hundred ($500.00) Dollars per violation per day or as otherwise provided for by law.

(b) All private motor carriers must yield for inspection as directed by a duly authorized motor carrier enforcement officer or by posted road signs.

(c) Motor carrier enforcement officers may hold and detain equipment operated by a motor carrier for violations of applicable laws in the Oklahoma Statutes or rules of this Agency.

(d) If, in the judgment of a motor carrier enforcement officer, a detained vehicle poses an inherent risk to public health, public safety or welfare, upon direction of the Transportation Division Director or her/his designee, the motor carrier enforcement officer may arrange for impoundment of the detained vehicle at the expense of the motor carrier.

(e) Contents of impounded equipment must be inventoried, with any inventory expense incurred at the sole cost of the private motor carrier.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-3. Registration

(a) **General requirements for registration.** Before a vehicle can be proportionally registered in the state of Oklahoma the applicant or registrant must:

(1) Have an established place of business located in Oklahoma. Absent an established place of business in any IRP jurisdiction, an applicant must satisfy the residency requirements in 165:30-19-6, prior to being allowed to base plate in Oklahoma.

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant:

(A) The application must include the mailing address and telephone number of the applicant. In addition to providing the applicant's telephone number, the applicant may provide the telephone number of a third party who has knowledge of the applicant's whereabouts and is able to contact the applicant within a reasonable period of time upon request. An applicant or registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone number under this Section.

(B) If the application is signed by someone other than the applicant or registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Motor vehicles operated by a motor carrier with valid liability insurance on file with FMCSA or this Commission are exempt from subsection (a) (4) of this Section;

(6) If the applicant is leased to a motor carrier, the applicant must provide a copy of the lease to satisfy Oklahoma's financial responsibility requirements (47 O.S. § 7-602).

(7) Provide proof of ownership;

(8) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(9) Pay all applicable fees to complete registration. Continuous registration is required, therefore registration fees shall be assessed from the last vehicle registration date or the date of sale.

(10) Provide the USDOT number of the registrant on the IRP application. Where the USDOT number of the registrant and the carrier responsible for safety are different, BOTH must be provided on the IRP application.

(11) Be the owner or the motor carrier responsible for safety.

(b) **Registration periods.** Application for registration may be made at any time during a registration year.

(c) **Where to make application.** Application for registration may be submitted through the mail to the IFTA/IRP Section, Transportation Division, Oklahoma Corporation Commission, P.O. Box 52948, Oklahoma City, Oklahoma, 73152-2948, or by applying in person at 2101 N. Lincoln Blvd., in Oklahoma City. A list of other locations where application may be submitted is available from the IFTA/IRP Section or the Commission website under the Transportation Division (http://www.occeweb.com).

(d) **Incomplete applications.** No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

(e) **IRP Plan Compliance.** Since registration with the Plan can affect other jurisdictions' registration fees and tax receipts, the Transportation Division must be diligent in ensuring that those registrants with Oklahoma as their base jurisdiction are indeed entitled to base in Oklahoma.

(1) If after approval of the application and during the registration year, the Transportation Division has reason to believe that critical account information submitted on an application has changed, the Transportation Division shall allow the registrant 30 days to provide the updated information. If the information is not provided within that time or is deemed insufficient, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

(2) If after approval of the application and during the registration year the Transportation Division has evidence that critical account information submitted on an application was submitted erroneously or falsely, the Transportation Division shall revoke the registrants' credentials in accordance with OAC 165:5-25.

165:30-19-4. Title requirements and proof of ownership

(a) Owners of vehicles registered in Oklahoma must possess an Oklahoma title as proof of ownership unless the vehicle has been previously registered in another jurisdiction and engaged in interstate commerce.

(b) Proof of ownership must be submitted for all vehicles being registered through an original or supplemental application. Documents necessary to prove ownership include:

(1) If titled in Oklahoma, a copy of the front and back of the title or vehicle registration in the owner's name;

(2) If previously registered in another jurisdiction and engaged in interstate commerce, a copy of another jurisdiction's IRP cab card indicating ownership~~and~~or a copy of the IRP cab card and the front and back of the out of state title;

(3) A lease-purchase agreement by which the applicant or registrant, under the terms of the agreement, is to become the owner of the vehicle at the end of the lease period for nominal or no additional consideration, and the vehicle is currently titled in the name of the leasing company and has been registered for interstate commerce with another jurisdiction.

165:30-19-19. Trip permits and hunters permits

(a) A 72-hour trip permit provides full registration to trucks, truck-tractors, trailers, semi trailers, and motorbuses, which are not registered in Oklahoma.

(1) The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.

(2) Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchase a 72-hour trip permit before proceeding through the State of Oklahoma.

(3) Trip permits are available from the Transportation Division of the Commission and Commission contracted wire services. The cost of the permit is set forth by 47 O.S. § 1124 (B). Trip permits obtained through wire services may have additional fees associated with issuance. Once a trip permit is issued, no refunds will be allowed.

(4) An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.

(5) A permit must be issued on newly purchased trucks carrying a load and driving to another state for registration.

(6) Only one (1) copy of a 72-Hour permit receipt will be given to applicant.

(7) A trip permit effective date shall not be more than 72 hours from the time it is issued.

(b) An unladen permit, otherwise known as a hunters permit, provides temporary registration to an apportionable vehicle at the unladen weight of the vehicle for a period of forty-five (45) days.

(1) Hunters permits are typically obtained by a vehicle owner to move the vehicle, without any load, to another jurisdiction when apportioned registration credentials are no longer valid due to the severance of a lease with a motor carrier.

(2) A Hunters permit is recognized as valid registration in all IRP participating jurisdictions at a weight not to exceed the unladen weight of the vehicle or the combined

unladen weights of the power unit and trailer, provided however, an unregistered trailer must obtain a separate permit.

(3) Hunters permits are available from the Commission at a fee as prescribed by 47 O.S. § 1124 (C). Once an unladen permit is issued, no refunds will be allowed.

(4) The operator of a motor vehicle possessing an expired, altered or undated hunters permit shall be deemed to be in violation of state statutes and the rules of this Commission and shall be subject to full registration and penalty.

(5) An unladen permit effective date shall not be more than 72 hours from the time it is issued.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-4. Trip permits

(a) In lieu of motor fuel tax licensing under this Agreement, persons may elect to satisfy motor fuels use tax obligations on a trip-by-trip basis.

(b) Trip permits valid for a period of 120 hours from the time of issuance, may be obtained from the Commission or one of the authorized trip permitting services. Once a fuel trip permit is issued, no refunds will be allowed.

(c) A fuel trip permit effective date shall not be more than 72 hours from the time it is issued.

165:30-21-16. Interest

(a) When any licensee fails to make a required tax remittance to the Commission before the delinquency date, the licensee shall pay, in addition to the penalty provided for herein, interest in the amount ~~of one percent per month~~as prescribed in the IFTA. When delinquencies of a fractional month occur, the effected jurisdictions will not receive their tax payments until the following transmittal month. Therefore, interest on delinquencies for a fractional portion of a month shall be calculated at the full month rate.

(b) In accordance with the International Fuel Agreement, the Commission cannot waive interest assessed and/or paid by a licensee on behalf of other jurisdictions. Licensees desiring other jurisdiction(s) interest waivers must receive written authorization from the other jurisdiction(s) and present such waivers to the Transportation Division. Upon confirmation, the Transportation Division may remove the amounts from an assessment, or if previously paid, refund those amounts to the licensee.

(c) Interest due on Oklahoma's portion of fuel taxes remitted on an IFTA quarterly return may be waived by the Commission for good cause shown. Good cause, while not limited to the items below, may include:

(1) Commission error causing the delinquency,

(2) Extended history of timely filing (at least two years) and payments prior to the delinquency, or

(3) Natural disaster causing the delinquency.

(d) Licensee's who desire waiver of interest amounts greater than $1,000 must file an appeal with the Court Clerk's Office in accordance with OCC administrative procedures.

[OAR Docket #12-635; filed 5-16-12]

TITLE 175. STATE BOARD OF COSMETOLOGY
CHAPTER 10. LICENSURE OF COSMETOLOGISTS, SALONS, SCHOOLS AND RELATED ESTABLISHMENTS

[OAR Docket #12-725]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Sanitation and Safety Standards for Cosmetology Establishments, Salons and Schools
175:10-7-5 [AMENDED]
175:10-7-6 [AMENDED]
175:10-7-31 [NEW]
Subchapter 9. Licensure of Cosmetologists and Related Occupations
Part 5. Demonstrators, Cosmetic Studios; Trade Shows; Guest Artists; Wig Dressing; Other Practices of Cosmetology
175:10-9-55 [NEW]

AUTHORITY:
59 O.S., 1991, Section 199.3 (B)(1); State Board of Cosmetology

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SUPERSEDED EMERGENCY RULES:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
Under Title 59 O.S., Section 199.3(B), the Board has the authority to adopt and promulgate rules relating to standards of sanitation, which are observed and practiced by all beauty schools and salons. The Board conducts periodic inspections to ensure sanitation and safety standards are met in salons and schools and that the schools are conducting classes according to the Board's prescribed curriculum of all cosmetology course as in Title 59 O.S., Section 199.7. The Board also develops and administers examination for licensure as appropriate as in Board Rules 175:1-5-11 and 175:10-9-25.

CONTACT PERSON(S):
Sherry G. Lewelling, Executive Director, Oklahoma State Board of Cosmetology, 2401 NW 23rd Street, Suite 84, Oklahoma City, OK 73107, 405-522-7615 and Jennifer McRee, Principal Assistant and Rules Liaison, Oklahoma State Board of Cosmetology, 2401 NW 23rd, Suite 84, Oklahoma City, OK 73107, 405-522-7616.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308 (A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 7. SANITATION AND SAFETY STANDARDS FOR COSMETOLOGY ESTABLISHMENTS, SALONS AND SCHOOLS

175:10-7-5. Sanitizer(s) required for use in cosmetology schools and related establishments

(a) Every precaution shall be taken to prevent infection by sanitizing all cosmetology tools.

(b) All items shall be cleaned/sanitized by removing all visible debris from an item or surface by using soap/water or a cleaning agent.

(c) Items shall be rinsed thoroughly in plain water.

(d) Items shall be placed in a wet sanitizer, which is a large, pan-type container which may be of plastic, enamel, stainless steel, or rubber and shall be fully immersed in an EPA approved disinfectant prepared according to manufacturer's directions. The items must stay immersed for full contact time according to manufacturer's instructions in order that item or surface stays moist with disinfection for all pathogens listed on the label to be effectively destroyed.

(e) Combs may be disinfected in a cylinder jar by immersing in an EPA approved disinfectant prepared according to manufacturer's directions. The combs must stay immersed for full contact time according to manufacturer's instructions in order that item or surface stays moist with disinfection for all pathogens listed on the label to be effectively destroyed.

(f) If an autoclave is used to sterilize items after disinfection, in order to destroy all microbial life (including spores), periodic testing and maintenance must be performed on system according to manufacturer's instructions.

(g) All disinfected and/or sterilized items must be stored in a dry/closed cabinet, drawer, or other closed/covered/light type container without fumes.

~~(a) Wet sanitizer is a large, pan-type covered container for use in a cosmetology salon or school. It may be of plastic, enamel, stainless steel, or rubber and shall be filled with sufficient EPA registered liquid chemical sanitizing solution to completely cover all combs, brushes or other articles placed with for the purpose of sanitizing cosmetology articles.~~

~~(b) Every precaution shall be taken to prevent infection by sanitizing all cosmetology tools~~

~~(c) All combs and brushes and other instruments, after being used, shall be sanitized as follows:~~

~~(1) Hair and other soil shall e cleaned from brushes and combs.~~

~~(2) Implements and other articles shall be washed in warm water and detergent.~~

~~(3) Articles shall be rinsed thoroughly in plain water.~~

~~(4) Articles shall be dried and placed in dry sanitizer without fumes.~~

~~(d) Dry sanitizer is a clean, dry cabinet or sanitizer/sterilizer/cabinet, drawer, or other closed/covered/light type container which shall be used to store sanitized instruments, combs and brushes.~~

175:10-7-6. Sanitizing agents for use in cosmetology schools and related establishments

(a) Disinfectants for use by cosmetology establishments and schools shall be used only if
registered with the Environmental Protection Agency (EPA) for use as a disinfectant to achieve its intended purpose in accordance with the product label.

(b) To sanitize and minimize corrosion of metal instruments, immerse and wipe thoroughly with an EPA approved disinfectant or spray with approved oil base sanitizer and store in a cabinet or closed container free from contamination between use and service for each patron.

(c) All disinfection immersion liquid must be changed daily or sooner if visibly contaminated.

(d) All customer contact items, including neck rests, arm rests and seats, must be cleaned and disinfected between customers.

175:10-7-31. Manicuring equipment

The use of the credo blade or knife is prohibited for use by licensees.

SUBCHAPTER 9. LICENSURE OF COSMETOLOGISTS AND RELATED OCCUPATIONS

PART 5. DEMONSTRATORS; COSMETIC STUDIOS; TRADE SHOWS; GUEST ARTISTS; WIG DRESSING; OTHER PRACTICES OF COSMETOLOGY

175:10-9-55. Practices of cosmetology

(a) Only licensed Facialist/Estheticians and Cosmetologists, as defined in Title 59 O.S. § 199.1 (5) and (10) may perform threading and body sugaring.

(b) Only a licensed Facialist/Esthetician or Cosmetologist may perform eyelash extensions.

[OAR Docket #12-725; filed 5-24-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #12-674]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Departmental Precepts
210:1-3-2. Annexation, consolidation,~~and~~ dispensation, and severance determination [AMENDED]
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70 O. S. § 3-104, State Board of Education
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Subchapter 3. Departmental Precepts
210:1-3-2. Annexation, consolidation,~~and~~ dispensation, and severance determination [AMENDED]
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Docket Number:
11-1056
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The rule amendments include a new section entitled "severance determination". When a school district undergoes annexation or consolidation, the districts who annex or consolidate the closing district receive money from the State Department of Education from the School Consolidation Assistance Fund. This Fund is used to cover costs districts incur during the process, including payment of severance to district employees dismissed due to the annexation or consolidation. The amendments will provide a true application process and a method and procedure for determining severance. It will also provide due process for applicants affected by the severance determinations made by the State Board of Education.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 3. DEPARTMENTAL PRECEPTS

210:1-3-2. Annexation, consolidation, ~~and~~ dispensation, and severance determination

(a) **State Board of Education role.** The State Board of Education's role is: to receive and implement an order from the State Superintendent which declares that all or part of a district has been voted to be annexed, following statutory requirements, to adjacent or transporting district(s); to decide on the division of assets and property of a disorganized district in the event the problem cannot be resolved by the boards of annexing districts; and to set standards, promulgate rules and procedures, and conduct studies relating to the consolidation of two or more adjacent school districts. [70:7-105 & 106]

(b) **Mandatory annexation.**

(1) Mandatory annexation will be considered by the State Board of Education upon occurrence of the following situations:

(A) When a school district has been declared "academically at-risk" pursuant to 70 O.S. 1989, §1210.541.

(B) When a school district is nonaccredited by the State Board of Education.

(C) When a district, without officially dispensing with school, fails to open or maintain a school (except when situations beyond the control of the district cause a normal delay). [Title 70 O.S. § 8-106].

(2) When it comes to the attention of the State Board of Education that a local school district is facing the possibility of mandatory annexation, the State Board of Education shall provide the district with an opportunity to be heard. The State Board of Education shall notify the superintendent and each school board member of the time, date and place of the meeting. At the meeting, representatives of the school district, including patrons, shall have an opportunity to address the State Board of Education and to provide information to the Board. The President of the State Board of Education may set time limits on individual presentations and may require groups to select a representative to speak on behalf of the group.

(3) When the State Board of education determines that a local school district is to be mandatorily annexed, the following steps will be followed:

(A) The Board will notify one or more of the potential receiving districts that they are responsible for taking an inventory of property and securing the buildings and other property of the district being mandatorily annexed. In selecting the district(s) responsible for this procedure, the State Board of Education may rely on recommendations from the State Superintendent.

(B) The State Board of Education will immediately notify the district superintendent of the Board's action.

(C) The state superintendent shall notify the parents or legal guardians of all students in the district being annexed that they must apply for a transfer to

the state superintendent within 10 days of the State Board of Education's action to annex. The state superintendent may require the parents to furnish a legal description of their residence at the time the transfer request is made.

(D) Once the state superintendent has received the transfer requests, she/he shall notify the State Department of Education, in writing, of the breakdown of where students are asking to attend school by transfer and provide the State Department of Education with the legal description of the residence of each student.

(E) The State Department of Education will utilize the transfer requests and legal descriptions submitted to the state superintendent as a guide in plotting the proposed boundary lines for dividing the annexed district. To the maximum extent possible, the preference of the students and parents shall be acknowledged.

(F) The State Department of Education will present the proposed boundary lines for division of the annexed district to the State Board of Education for approval. The proposal shall be accompanied by the legal description of the property being annexed.

(G) The assets and liabilities of the annexed district shall become part of the annexing districts. When an annexing district assumes a debt incurred by the annexed district prior to July 1, the district assuming the debt should receive a comparable portion of the assets.

(H) When two or more annexing districts are involved in the division of an annexed district, the assets and liabilities are divided by agreement between the boards of education. If the boards of education are unable to agree, the matter shall be divided by the State Board of Education.

(c) **Consolidation of school districts.**

(1) A petition by the board of education of any school district desiring a study of the consolidation of such school district with another school district or districts, or proposing such consolidation, shall be signed by the president and clerk of such board of education, and such petition shall be considered by the State Board of Education at its next regular meeting. If a study of the proposed consolidation is deemed proper and advisable, the Secretary of the State Board of Education shall forthwith advise the boards of education of all districts involved that a study of the proposed consolidation is going to be made.

(2) The State Board of Education reserves the right to make a study of the advisability of consolidating two or more school districts in any area of the State, on its own initiative, and without any petition from a board of education. When such decision is made, each school district involved shall forthwith be advised that such study is going to be made, and such districts shall be directed to determine, by such procedures as the State Board of Education may prescribe what, if any, consolidation should be carried on in the area under study.

(3) All studies of the advisability of consolidation shall be under the direction of the President of the State Board of Education, who shall utilize the services of appropriate divisions of the State Department of Education.

(4) If after a study of the population, wealth, terrain, trade areas and other pertinent factors, it is determined that two or more school districts should be consolidated, the board of education of each school district involved shall be so advised.

(5) No election to determine consolidation shall be called or held unless there shall have been filed with the State Board of Education a petition therefore, signed by a majority of the school district electors of each school district included in the proposed consolidation. When such a petition is received and is determined to be sufficient, the State Board of Education shall call an election for the purpose of affording to the school district electors in the school districts involved an opportunity to express their wishes through a majority vote of the school district electors in the entire territory involved. Notice of such election, stating the time and date thereof and the polling places, shall be posted in five (5) public places in each school district involved, not less than ten (10) days before date of such election. Such election shall be conducted by one or more members of the State Department of Education, as designated by the President of the State Board of Education.

(6) If a majority vote at such election is in favor of consolidation, the State Board of Education shall issue a written order to such effect, declaring the participating school districts dissolved and the new school district established. Copies of such order shall be sent to the county treasurer, county assessor and the county clerk of each county in which the districts involved are situated, and to the Oklahoma Tax Commission, and to the board Of education of each school district involved. If a majority vote at such election is not in favor of consolidation, the State Board of Education shall make a written order to such effect, and shall send a copy thereof to the board of education of each school district involved.

(7) The local board of education members representing the school district having the largest number of enumerated children shall serve as board members of the newly-formed school district for the remainder of their term.

(8) All liabilities, assets, powers and duties shall become the responsibility of the newly-formed school district.

(d) **Dispensing with a school district.**

(1) Should residents of a district desire to dispense with all or part of this school district, it is the duty of the State Superintendent to notify the State Board of Education of a majority vote of eligible electors at an annual or special election or by a petition signed by sixty (60) percent of eligible school district electors to dispense with either grades 1 thru 8 or grades 9 thru 12, or both, and such procedure shall be accomplished prior to June 30. Subsequently, parents of such children in the dispensed grades should file an application transfer for the ensuing year with the State Superintendent. Any district which dispenses with its

entire school district for the ensuing year shall be mandatorily annexed on July 1 by the State Board of Education to an adjacent school district(s) to which pupils have been transferred.

(2) Provided that if a school district does not officially dispense with its school following the preceding procedure and fails to open and maintain a school during such ensuing year, the State Board of Education, except as otherwise provided, shall at its next regular meeting annex such district, as provided by law. [70-8-106]

(e) ~~**Guidelines and forms.** Copies of corresponding State Department of Education forms and guidelines for the implementation of annexations/consolidation are available from the consolidation officer of the State Department of Education.~~ **Severance determination.** Pursuant to 70 O.S. §7-203(B), the State Board of Education may promulgate rules regarding its authority to budget and make expenditures of monies contained in the School Consolidation Fund. School Consolidation Funds can be used by annexing or consolidating districts to provide employment assistance in the form of severance for school district employees who are dismissed due to annexation or consolidation under 70 O.S. §7-203(B)(1)(c). The procedure for employees to make a severance application and process to receive a severance determination shall be communicated to all affected employees by the annexed or consolidated district superintendent. The severance application process is as follows:

(1) To qualify for severance, district employees (teachers, administrators, and support personnel) must first seek severance allowance from the annexing or consolidating district(s) prior to making application to the State Department of Education.

(A) Any annexing or consolidating school district(s) that receive School Consolidation Funds must accept and consider all requests for severance made by district employees who were dismissed due to annexation or consolidation, but not subsequently employed by the consolidating or annexing district(s).

(B) The annexing or consolidating district(s) may elect to award qualifying employees a severance in an amount up to and not to exceed eighty percent (80%) of the individual's salary or wages, exclusive of fringe benefits.

(C) Severance allowance from the annexing or consolidating district(s) is permissive in any amount from 0% to 80% of the individual's salary or wages, exclusive of fringe benefits, for the school year preceding the consolidation or annexation.

(D) For the purposes of calculation, the district(s) shall include only the salary or wages actually paid to the employee for the school year preceding the consolidation or annexation.

(E) Applications for severance shall be considered on an individual case by case basis.

(F) Each district shall promulgate their own rules and procedures for accepting, reviewing, and awarding severance. The criteria used for awarding severance must be measurable, objective, non-discriminatory, and uniformly applied.

(2) If the annexing or consolidating district makes an award of employment assistance in the form of severance, the district employee will not be eligible to make application to the State Department of Education for severance allowance unless the employee has also been denied unemployment compensation.

(3) Unemployment benefits received by any district employee dismissed due to annexation or consolidation may be counted as a form of employment benefit under 70 O.S. §7-203(B)(1)(c). Unemployment compensation may be considered as part of the total employment assistance received and may be taken into account or offset when severance allowance determinations are made.

(4) If a district employee is not employed by the annexing or consolidating district(s) and is subsequently denied severance or unemployment compensation by the annexing or consolidating district(s), pursuant to 70 O.S. §7-203(B)(1)(c), the district employee will be eligible to make an application for severance to the State Board of Education. Qualifying applicants shall receive a severance allowance from the State Board of Education pursuant to the following procedure:

(A) Severance allowance from the State Board of Education shall be in an amount up to and not to exceed eighty percent (80%) of the individual's salary or wages, exclusive of fringe benefits. An award of a severance allowance by the State Board of Education will be made only if:

(i) the applicant was not employed by the consolidating or annexing district and

(ii) severance or unemployment compensation was denied at the district level.

(B) Severance allowance from the State Department of Education can be in any amount from 0% to 80% of the individual's salary or wages, exclusive of fringe benefits, for the school year preceding the consolidation or annexation.

(C) For the purposes of calculation, the State Department of Education shall include only the salary or wages actually paid to the employee by the district for the school year preceding the consolidation or annexation.

(D) Only timely applications for severance received by the State Department of Education, Finance Division, will be considered. All applications for severance to the State Department of Education must be received no later than September 1 of the fiscal year immediately following the fiscal year in which the annexation or consolidation occurred. The application for employment assistance in the form of severance can be found on the SDE website, www.sde.ok.gov, or by contacting the State Department of Education, Finance Division.

(5) Severance allowance by the State Department of Education can be denied only for good cause with supporting documentation of the following:

(A) The applicant was hired by the consolidating or annexing district(s), regardless of the number of hours, part time or full time status, or rate of pay.

(B) The applicant was dismissed or non-reemployed by the local school district board for reasons other than consolidation or annexation (i.e. reduction in force or inability to pay due to financial exigency),

(C) The applicant received severance from the consolidating or annexing district(s) and in addition to unemployment compensation,

(6) Severance allowance by the State Department of Education can be reduced or adjusted below eighty (80%) percent of the applicant's salary or wages, excluding fringe benefits, for good cause with supporting documentation. Good cause to reduce or adjust severance can include, but is not limited to, consideration of the following:

(A) The annexation or consolidation was mandatory rather than voluntary.

(B) The applicant's length of service to the district.

(C) The applicant's service record, job performance, or conduct warrants consideration of a reduction or adjustment in severance. The application of this criteria must be supported by verifiable documentation and evidence that is made available for the Board's review.

(D) The applicant was hired by the local school board after the annexation or consolidation election results are called by the State Superintendent of Public Instruction.

(E) The applicant was hired by the local school board after the State Board of Education voted to non-accredit the district.

(F) The applicant failed to apply for or make an attempt to gain employment with the consolidating or annexing district(s).

(G) The applicant failed to apply for or attempt to obtain a severance allowance from the consolidating or annexing district(s).

(H) The applicant received unemployment compensation. The amount of unemployment compensation received can be considered an offset when determining severance.

(7) Severance Determinations. Upon receiving the application for severance the State Department of Education, Finance Division staff shall review the applications for severance and make a written recommendation to the State Board of Education regarding each severance application. Each severance application will be considered on an individual case by case basis and a recommendation for severance allowance or denial will be made by the SDE staff to the State Board of Education in writing during a regularly scheduled Board of Education meeting.

(A) The applicant will be notified of the SDE staff recommendation and will be given written notice of the time, place, and date of the regularly scheduled State Board of Education meeting that the Board will consider and voting upon the SDE staff recommendation for severance.

(B) The State Board of Education will vote on all SDE staff recommendations for severance in open meeting. All votes of the State Board of Education approving or denying a severance application will be considered a final order of the Board.

(8) The applicant will be notified in writing of the State Board of Education's final determination regarding severance allowance. The applicant will have ten (10) days from the date the notification of severance determination is received within which time to file a petition for appeal or reconsideration of the Board's determination.

(9) Any petition, reconsideration, or hearing on the Board's final order regarding severance shall be made pursuant to, and governed by, the Due Process Procedures of the State Board of Education as outlined in 210:1-5-1 of the Oklahoma Administrative Code.

(f) **Guidelines and forms.** Copies of corresponding State Department of Education forms and guidelines for the implementation of annexations/consolidation and severance are available from the consolidation officer of the State Department of Education.

[OAR Docket #12-674; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 1. STATE BOARD OF EDUCATION

[OAR Docket #12-673]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Due Process
210:1-5-7. Teacher evaluation, dismissal, and nonreemployment [AMENDED]
210:1-5-8. Teacher due process hearings; hearing procedures; probationary teachers [AMENDED]
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70 O. S. § 3-104, State Board of Education
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Subchapter 5. Due Process
210:1-5-7. Teacher evaluation, dismissal and nonreemployment [AMENDED]
210:1-5-8. Teacher due process hearings; hearing procedures; probationary teachers [AMENDED]
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October 7, 2011
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29 Ok Reg 100
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N/A
ANALYSIS:
The trial de novo process is revoked effective August 26, 2011. Any delay in implementing the rule amendments could negatively impact districts from being able to make termination decisions. Administrators and superintendents will need to have procedures for teacher termination in place for the 2011-2012 school year. House Bill 1380 reforms the dismissal procedures for career teachers by giving superintendents and local school boards the ability to dismiss or nonreemploy teachers in a timely manner by repealing the trial de novo process.
CONTACT PERSON:
Connie Holland, 405-521-3308

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 5. DUE PROCESS

210:1-5-7. Teacher evaluation, dismissal, and nonreemployment

(a) **Teacher Evaluation, Dismissal, and Nonreemployment Act.**

(1) The State Board of Education recognizes its regulatory and leadership role in the implementation of this statute and commits its cooperation accordingly. It believes that the most effective vehicle to promote professional growth is self-motivation. The teacher should be the prime recipient of the benefits of teacher evaluation thus identifying his/her own needs for improvement. The evaluation instrument serves as one objective measure by which administrators and boards of education can validly infer inadequate competencies of both teachers and administrators.

(2) The State Board of Education believes that grievances between boards of education and teachers can best be settled in the locale and thus supports the principle of due process before the local school board. It further supports the right of appeal in the exercise of human rights.

(b) **Duties.** The law requires the State Board of Education to develop and adopt standards and procedures to be followed in due process hearings of local boards of education. Such standards are to follow the pattern of the Administrative Procedures Act [75-301-308.2].

(c) **Written policy of evaluation.** A teaching principal may conduct teacher evaluations if so designated by the local board of education.

(d) **Minimum criteria for establishing evaluation systems.** The written policy and procedures will facilitate the implementation of the Teacher Evaluation Law of 1977, as amended by House Bill No. 1466 (70-6-102.2). Written policy of evaluation for all teachers and administrators is to be based on minimum criteria developed by the State Board of Education and shall include both teaching and administrative criteria. Each board of education shall maintain and annually review the evaluation policy. Each district's evaluation system should contain the following elements:

(1) A written policy addressing purpose, goals, objectives, targets, procedures, methods, and uses of the evaluation system. This policy shall be developed by the board in consultation with representative teachers and administrators.

(2) Procedures for making evaluation information available to all affected personnel.

(3) A listing of the evaluation and hearing steps.

(4) Written performance criteria by which to evaluate all certificated staff. This must include, but is not limited to, state mandated minimum criteria for effective teaching performance and minimum criteria for effective administrative performance.

(5) Dates (or a schedule) for evaluation visits for probationary and tenured staff.

(6) Identification of the personnel or positions which will perform the evaluations.

(7) What is to be evaluated. Consideration should be given to:

(A) Self-evaluation progress reports by individuals being evaluated.

(B) Criteria, in addition to state mandated criteria, which might include: criteria related to the job description, district goals, school objectives, and the previously cooperatively developed position objectives.

(C) Equitable application of evaluation criteria to all personnel.

(D) Evaluating only those things which are currently applicable to the job the staff member is performing and not those things which should have been evaluated during preemployment.

(8) Specified ways that evaluation data will be collected as well as when, how long, and how observations will be performed.

(9) Security and controlled access to the evaluation reports.

(10) Provisions for initial, post visit, and follow-up conferences with evaluator or immediate supervisor. Forms should be completed by evaluator, signed, then reviewed, commented on, and signed by the person being evaluated.

(11) Place for recommendations, prescriptions, or citations of inadequacy. These procedures should include written statements by the evaluator as to:

(A) What should be done by the person evaluated, including level of performance expected.

(B) When the corrective action is expected to be completed, which time shall not exceed two months.

(C) What resources the school will provide to help the person evaluated achieve the expected performance.

(D) The form in which the report of performance should be submitted (i.e., oral interview, self-evaluation report, narrative description, list of data action documents, etc.).

(12) Ways the administration will provide resources and assistance for corrective action. This assistance should provide alternatives which could include:

(A) Assignment to another school or position within the district.

(B) Visitations and planning.

(C) Demonstrations or simulations.

(D) Video tapings and assigned supervisor.

(E) Reports.

(F) Special supervision.

(G) Assignment to a performance team.

(H) Conference.

(I) Workshops and inservice sessions.

(13) Ways the district will utilize the evaluation finding to improve learning in the district to:

(A) Develop inservice education programs to resolve inadequacies.

(B) Identify areas where improvements are needed.

(C) Provide justification for changes in staff, facilities, resources, and programs, or to be a needs assessment for developing new programs.

(D) Disseminate valuable information to various publics.

(E) Provide a record of the quality of teaching and quality of staff in the district.

(e) **Procedures designed to avoid potential teacher dismissal.** Principals having delegated administrative responsibilities as a part of the comprehensive operation of their respective schools have an inherent obligation for the professional success of their teaching staff. Subsequent to an analysis of the results of a number of measures from which it can be validly inferred from a teacher's performance the principal or evaluator shall, according to law:

(1) Bring the matter to the attention of the teacher, in writing, and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or nonreemployment; and

(2) Allow a reasonable time for improvement, which time shall not exceed two (2) months. The nature and gravity of the teacher's conduct shall be considered in determining what length of time would be reasonable. If the teacher does not correct the cause for potential dismissal or nonreemployment within a reasonable length of time, the principal shall make a recommendation to the superintendent of the school district for the dismissal or nonreemployment of the teacher. (70-6-103.2) This section does not apply to a superintendent of schools. 648 P.2d 26

(3) The school system should make facilities at its disposal available to help such teachers. The principal will encourage the use of such facilities as:

(A) an accessible professional library and/or media center;

(B) local, county, and State Department of Education supervisory services;

(C) inservice education activities with local, county, regional service center, college, or state groups;

(D) individual study; and

(E) the acquisition and utilization of a wide variety of teacher materials.

~~(f) **Pretermination procedures.** Subsequent to the decision by the superintendent that cause does, in fact, exist for the dismissal or nonreemployment of a teacher certain steps must be followed. These include notification and hearing. The United States Supreme Court has ruled that school employees have certain pretermination rights which must be met prior to dismissal which include:~~

~~(1) Being told orally or in writing the charges against the employee.~~

~~(2) Being given an explanation of the school's evidence against the employee; and~~

~~(3) Being given an opportunity to present evidence in person or in writing of why the employee should not be discharged.~~

210:1-5-8. Teacher due process hearings; hearing procedures~~; probationary teachers~~

(a) The parties to the hearing are the ~~probationary~~ teacher and the district superintendent or designee and they shall be afforded the following rights at any hearing held pursuant to these regulations.

(1) The right to be represented.

(2) The right to present witnesses in person or to present their testimony by interrogatories, affidavits, or depositions as agreed to by the parties. A list of all witnesses and a list of exhibits shall be furnished to the other party at least five (5) days before the hearing.

(3) The right to cross-examine ~~witness~~witnesses.

(4) The right to testify in his/her own behalf and present evidence and argument on all issues involved.

(5) The right to have an orderly hearing.

(6) The right to have an impartial decision based upon the evidence presented.

(b) The President of the school board, or in case of absence a designee, shall be the presiding officer at the hearing.

(c) All hearings shall conform to the following:

(1) Hearings shall be held no sooner than twenty (20) and no later than sixty (60) days after the teacher receives written notification of the recommendation for dismissal or nonreemployment and notice of the opportunity for hearing.

(~~1~~2) Hearings held within the scope of these guidelines shall be convened by the President of the board who shall

state the purpose of the hearing, introduce the parties and administer the oath to all persons who will testify.

(~~2~~3) Upon the request of either party, the Presiding Officer may exclude from the hearing room the witnesses not at the time under examination, except that a party to the proceeding and his/her representative shall not be excluded.

(~~3~~4) At the hearing, the burden of proof shall be on the superintendent and the standard of proof shall be by a preponderance of the evidence.

(~~4~~5) ~~While a record of the hearing is not required by law, the State Board of Education strongly suggests that the~~The local board of education shall maintain ~~such~~ a record (including a tape or other electronic or digital recording of the hearing and any documents or evidence presented to the board) for two (2) years from the date of the hearing.

(~~5~~6) Informal disposition of any recommendation for dismissal or nonrenewal may be made by written stipulation, agreed settlement, consent order or default.

(d) The order of procedures shall be:

(1) Opening statement by superintendent.

(2) Opening statement by the teacher.

(3) Presentation of superintendent's evidence, followed by cross-examination of witnesses by teacher.

(4) Questions by local board members.

(5) Presentation of teacher's evidence followed by cross-examination of witnesses by superintendent.

(6) Questions by local board members.

(7) Presentation of Rebuttal and Surrebuttal Evidence as necessary.

(8) Closing argument by superintendent.

(9) Closing argument by teacher.

(10) Deliberation by local board.

(11) Vote by local board to accept or reject the superintendent's recommendation and recitation of findings of fact upon which the decision is based.

(e) Presentation and consideration of evidence shall abide by the following:

(1) Only evidence which reasonably relates to the issues before the board, as reflected in the notice to the teacher, should be deemed relevant.

(2) Strict rules of evidence as required by a court of law shall not apply in these hearings.

(3) Rulings on admissibility of evidence will be made by the Presiding Officer.

(4) Documentary evidence may be received in the form of copies or excerpts.

(5) Documentary evidence presented to the board shall be marked with a distinguishing number or letter such as Teacher's Exhibit #1 or Superintendent's Exhibit #1.

(6) While hearings are open to the public, no questions or statements will be allowed by members of the public attending the hearing except through the parties or their council.

(f) Decision on hearing will be rendered.

(1) After due consideration of the evidence and the testimony presented at the hearing, the local board shall decide whether to dismiss or nonreemploy the teacher.

(2) The board's decision shall be voted in open meeting.

(3) The decision of the board shall include a recitation of the basic or underlying facts relied upon by the board in reaching its decision.

(4) The board shall notify the ~~probationary~~ teacher in writing of its decision as set out above by certified mail, restricted delivery, return receipt requested or substitute process as authorized by law within ten (10) business days of the hearing.

(5) The school board's decision regarding the dismissal or nonreemployment of a ~~probationary~~ teacher is final.

[OAR Docket #12-673; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

[OAR Docket #12-672]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
210:10-1-9. Transfers [REVOKED]
210:10-1-18. Transfers [NEW]
210:10-1-19. Special Education and Gifted Education transfers [NEW]
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70 O. S. § 3-104, State Board of Education
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N/A

ANALYSIS:

Rules have been updated to reflect current statutory requirements and clarify departmental policy and procedure. Rules address open, emergency, special education and gifted transfers. The State Board of Education revoked by emergency action rules relating to the implementation of the Oklahoma Education Transfers Act. Previous rules were outdated and did not reflect current law.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

210:10-1-9. Transfers [REVOKED]

~~(a)~~ ~~**Regular transfers (70-8-101, 102, 103).**~~ ~~Regular transfers may be approved by the County Superintendent if both the sending and receiving boards of education approve. Provided, however, if the grade such child is entitled to pursue is not offered in the district where such child resides, the transfer must be approved. A special education transfer must be approved with the consent of the receiving board. The following statutory time lines must be followed for the regular transfer process:~~

~~(1) Not later than May 15 Application by parents or guardian filed with county superintendent.~~

~~(2) Not later than May 25 County superintendent must notify the clerk of each affected board of education of the proposed transfers and a hearing date.~~

~~(3) On or before June 5 County superintendent conducts a hearing for either board of education to show cause as to whether or not the transfer should be granted.~~

~~(4) Not later than June 15 County superintendent must notify the clerk of each affected board of education as to whether or not the transfer was granted.~~

~~(5) Anytime before June 20 Either district or parent or guardian may appeal the action of the county superintendent to the district court, in writing.~~

~~(6) Not later than June 30 The decision must be rendered by the court and the decision is final.~~

~~(b)~~ ~~**Emergency transfers (70-8-104).**~~ ~~Emergency transfers ordered by the county superintendent of schools, subject to approval of the State Board of Education, are based upon any one of the following: destruction of a building, inability to furnish the grade of study the pupil is entitled to pursue, inability to offer the subject a pupil desires to pursue, nonavailability of science, mathematics, or foreign language, total failure of transportation facilities previously had or contemplated, approval of the boards of education of the sending and receiving districts. Emergency transfers must be filed with the State Department of Education within 30 days of date of order by county superintendent.~~

~~(c)~~ ~~**Special education transfers.**~~

~~(1)~~ ~~**Regular special education transfer:**~~ ~~In order that a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101 may be transferred, a written application for such transfer, designating the district to which the transfer is desired, shall be made by either of his/her parents, or by his/her guardian, and such application shall be filed with the county superintendent of schools for transfers to school districts in the State of Oklahoma and with the State Board of Education for transfers to school districts in another state not later than May 15, preceding the school year for which the transfer is desired. The county superintendent of schools shall notify, no later than May 25, the clerk of the board of education of the district from which the transfer is proposed to be made and the clerk of the board of education of the district to which the transfer is proposed to be made. The notices of the application for transfer shall so state that the board of education, from which the transfer is proposed, will submit information as required by STATE BOARD OF EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified child with a disability and that on or before June 5, the board of education of either district affected by the proposed transfer shall have an opportunity to show cause, if any, why the transfer should or should not be granted. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP). The county superintendent of schools shall, not later than June 15, notify, in writing, the clerk of each board of education affected as to whether or not the transfer has been granted. Provided that at any time before June 20, the board of education of either district or the parent or guardian of the child may appeal, in writing, from the action of the county superintendent of schools to the district court of the county in which the child resides, and such appeal shall be heard, and a decision rendered thereon not later than June 30, and such decsion shall be final.~~

~~(2)~~ ~~**Emergency special education transfer.**~~ ~~A written application for an emergency special education transfer for a child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, designating the district to which the transfer is desired shall be made by either the parent or guardian, and on an adequate showing of emergency based on information as required by STATE BOARD OF EDUCATION POLICIES AND PROCEDURES MANUAL FOR SPECIAL EDUCATION IN OKLAHOMA for the delivery of Special Education Services for each identified child with a disability. This information will include (1) a current individual evaluation, (2) a categorical eligibility statement and (3) a current Individualized Education Program (IEP) and shall be submitted to the county superintendent who may make and order a transfer, subject to approval by the State Board of Education.~~

~~(3)~~ ~~**Cancellation of regular or emergency special education transfer.**~~ ~~A transfer made may be canceled with the concurrence of the board of the receiving district, and~~

~~a transfer granted. Also, on affidavit of parent or guardian, or of the school board of the transferring district, disclosing removal of residence from the transferring district, a transfer previously made may be canceled. Cancellation of special education transfers are subject to the rules and regulations of the State Board of Education and the procedural due process requirements outlined at 20 U.S.C. § 1415, of the Individuals With Disabilities Education Improvement Act.~~

~~(4) **Residence of child attendance in transportation area.** Any child, identified pursuant to the provisions of Title 70 O.S. 1981 § 13-101, residing in a school district in the State of Oklahoma that does not offer the grade such child is entitled to pursue shall be entitled to attend the school of the school district in the transportation area in which such pupil resides that offers the grade he is entitled to pursue.~~

~~(d) **Kindergarten transfers (70-18-108).** It is the duty of every school district in this state to provide and offer kindergarten free of tuition for every child residing in such district who attains the age of five (5) years by the second day of September of the school year such kindergarten is offered. This duty may be satisfied by transferring kindergarten children to other school districts which accept them and provide kindergarten for such children with the district in which the child resides paying seventy five percent (75%) of the average daily attendance per capita cost of the receiving district. The average daily attendance of such child shall be credited to the sending district of the child. When tuition is paid to a public school district for an underage kindergarten student during a given year, said student can legally enroll as a first grade student the following year in the same district without paying tuition. (70-1-114)~~

~~(e) **Gifted and talented transfers (70-1210. 307).** Beginning with the school year 1983-84, it shall be the duty of each school district to provide gifted child educational programs for all identified gifted children, as defined in Section 1210.301 of Title 70 of the Oklahoma Statutes, who reside in that school district. This duty may be satisfied by: The district transferring identified gifted and talented children to other school districts which provide the appropriate gifted child educational programs, provided, no transfer shall be made without the consent of the board of education of the receiving school district. The district in which the child resides shall provide transportation for the transferred student and pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district. Transfers authorized by this section shall be made under such rules and regulations as the State Board of Education may prescribe; or the district located wholly or in part in a county participating in any program established by that county superintendent of schools.~~

210:10-1-18. Transfers

(a) All district transfers shall be governed by the Oklahoma Education Open Transfer Act, 70 O.S. § 8-101.1, et seq. Transfers made for the purpose of providing a free appropriate public education (FAPE) to special education students shall be governed by 70 O.S. § 18-110 and 70 O.S. § 13-101, et seq. Transfers made for the purpose of providing gifted child educational programs shall be governed by 70 O.S. § 1210.307.

(b) The following definitions shall apply in State Department of Education rules relating to transfers:

(1) Open Transfer- The transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue. An open transfer may be requested and approved only during the statutory timeframe.

(2) Emergency Transfer- the transfer of a student from the district in which the student resides to another school district furnishing the grade the student is entitled to pursue which, for specific reasons, must be requested and approved outside of the statutory timeframe required for open transfers.

(3) IEP Service Agreement- An agreement between school districts to provide special education and related services to an eligible student with a disability solely for the purpose of providing the student a free appropriate public education (FAPE). An IEP Service Agreement is the resourcing of special education and related services to a school district that provides special education and related services to an eligible student with a disability on behalf of the resident district.

(4) "Special Education and Related Services"- All services required to be provided pursuant to the Individuals with Disabilities Education Act (IDEA) U.S.C. §§ 1400, et seq.

(5) Receiving School District- The school district in which the student is seeking to be transferred.

(6) Resident School District- The school district in which the parent, guardian, or person having custody of the student resides, as defined in 70 O.S. § 1-113(A)(1).

(7) Parent- For purposes of the Education Open Transfer Act, this includes the parent, guardian, or person having custody of the student, as defined in 70 O.S. § 1-113(A)(1). For purposes of IDEA, the definition of parent set forth in 34 C.F.R. § 300.30 shall supersede this rule.

(c) **Open Transfers.** Transfers to another district may be approved by the board of education of the receiving school district. If the grade a student is entitled to pursue is not offered in the district where the student resides, the transfer shall be automatically approved by the receiving school district. No student may be granted more than one (1) open transfer per school year, but may qualify for additional transfers pursuant to emergency provisions of the Education Open Transfers Act or a legal change in residence.

(1) The parent of the student must complete an application form specified by the State Board of Education. The application must be submitted to the receiving school district by April 1 of the school year preceding the school year for which the transfer is being requested.

(2) The receiving school district shall notify the resident school district that an application for transfer has been filed.

(3) The board of education of the receiving school district shall approve or deny the application no later than June 1 of the same year and notify the parents of the student in writing.

(4) The parents of the student shall confirm enrollment in writing with the receiving school district by July 1 of the same year. Failure of the parents to notify may result in the loss of the student's right to enroll in the school district for that year only. If a parent fails to notify the receiving school district that a student will be enrolling, and the receiving school district chooses to cancel the transfer, the receiving school district shall provide a written notice of the cancellation to the parent and the resident district immediately upon cancellation.

(5) Local school districts shall adopt a policy governing the transfer of students who do not reside in the school district. A receiving school board of education may refuse the transfer request of a student who does not reside in the district in accordance with the provisions of the adopted policy, but may not accept or deny a request based on statutorily prohibited factors as set forth in 70 O.S. § 8-103.1.

(6) Approval of the resident district is not required for an open transfer.

(7) Transfer requests submitted outside of the statutory time frame will not be considered timely and must meet the statutory criteria of an emergency transfer to be approved.

(d) **Emergency Transfers.** In addition to the open transfer process, students may be transferred on an emergency basis, as prescribed by statute.

(1) The parents of the student may make an application for an emergency transfer. The application for emergency transfer must be filed with the superintendent of the receiving school district.

(2) The superintendent of the receiving school district or his/her designee responsible for approving transfers may approve the emergency transfer only upon an adequate showing of emergency, and subject to approval of the State Board of Education.

(3) Only the superintendent of the receiving school district or his/her designee responsible for approving transfers may submit an application for emergency transfer to the State Board of Education for approval. The superintendent or designee of the receiving school district shall collect documentation from the student desiring to be transferred, and may be required to submit such documentation to the State Board of Education through the State Department of Education's student information system. In submitting an application for an emergency transfer to the State Board of Education, the superintendent or designee verifies that he/she has personally reviewed and approved the application and has a good faith belief that the student qualifies for an emergency transfer.

(A) If the superintendent has appointed a designee to review and approve emergency transfers, the school district shall notify the State Department of Education of the appointment.

(B) Resident district approval of an emergency transfer is only required if the emergency transfer is being conducted pursuant to 70 O.S. § 8-104(5). Emergency transfer approval requests submitted to the State Board of Education shall be reviewed by the resident district within ten (10) business days of submission. Failure of the resident district to take action to approve or deny the emergency transfer request within ten (10) business days shall result in an automatic approval.

(4) Emergency transfers shall be approved only in the following circumstances:

(A) The destruction or partial destruction of a school building;

(B) Inability of the resident district to offer the subject a student desires to pursue, if the student becomes a legal resident of the school district after February 1 of the school year immediately prior to the school year for which the student is seeking to transfer.

(C) A catastrophic medical problem of a student, which for purposes of this section shall mean an acute or chronic serious illness, disease, disorder or injury which has a permanently detrimental effect on the body's system or renders the risk unusually hazardous;

(D) Total failure of transportation facilities;

(E) With the concurrence of both the sending and receiving school districts;

(F) The unavailability of remote or on-site Internet-based instruction by course title in the district of residence for a student identified as a result of the district's intake and screening procedures as in need of drop-out recovery or alternative education services, provided such student was enrolled at any time in a public school in this state during the previous three (3) school years; or

(G) The unavailability of a specialized deaf education program for a student who is deaf or hearing impaired. This transfer may be processed and handled as an IEP Service Agreement. Such determination shall be made in coordination with the parents of the requesting student.

(5) Obtaining an emergency transfer by submitting an application that includes false or inaccurate information, or obtaining an emergency transfer on behalf of a student who remains in the resident school district may result in a reduction of a district's funding allocation based on Average Daily Attendance (ADA) and/or Average Daily Membership (ADM).

(6) If a student to whom a transfer has been granted fails to report and/or enroll in the receiving school district, the superintendent of the receiving school district shall notify the State Board of Education and the resident school district within ten (10) business days.

(7) Emergency transfers may be cancelled with the concurrence of the board of the receiving school district and the parents of the student. A school district must notify the parent in writing of the date and time for which

the transfer will be considered for cancellation by the school board.

210:10-1-19. Special education and gifted education transfers

(a) It shall be the duty of each school district to provide special education and related services for all children with disabilities who reside in that school district in accordance with the Individuals with Disabilities Education Act (IDEA), U.S.C. §§ 1400, *et seq*. A school district/LEA may fulfill this duty, to provide FAPE, by one of the following:

(1) The district directly providing special education for such children;

(2) The district joining a cooperative program with another district or districts to provide special education;

(3) The district joining in a written agreement with a private or public institution, licensed residential childcare and treatment facility or day treatment facility within the district to provide special education and related services to students with disabilities;

(4) The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide FAPE to an eligible student with a disability on behalf of the resident district. This agreement is an IEP Service Agreement, entered into solely for the purpose of providing special education and related services (FAPE) to an eligible student with a disability. In this case, all funds remain with the resident school district, which agrees to pay tuition to the receiving district. Further, the average daily membership (ADM) of the student is credited to the resident district. The resident district has the responsibility to provide FAPE, special education and related services, including transportation for students serviced pursuant to this provision. Representatives of the resident district are responsible for the development and implementation of the IEP and must be provided the opportunity to participate in all IEP meetings. In the event of a due process complaint, the resident district retains responsibility.

(A) IEP Service Agreements entered into pursuant to this section for three (3) consecutive years to the same school district shall lead to automatic renewal of the agreement each year. In these cases, the resident district shall continue to pay tuition as provided by law. Automatic renewal occurs only in cases where districts have entered into IEP Service Agreements.

(B) IEP Service Agreements are granted by approval of both the resident and receiving school districts. Such agreements shall be memorialized in writing and documented in State Department of Education's student information system. This agreement should not be documented as a transfer pursuant to the Education Open Transfer Act.

(b) All transfers involving a student with disabilities are transfers and shall be conducted in accordance with the Education Open Transfer Act, 70 O.S. § 13-101, *et seq.*, and State Department of Education rules. Transfers granted to students who are incidentally special needs students shall be governed by OAC 210:10-1-18 and governing state law. Consideration shall be given to the original purpose of the transfer.

(1) In the event a student with disabilities requests a transfer for any reason other than to receive FAPE, the following provisions shall apply:

(A) The receiving school district shall establish availability of the appropriate program, staff, and services prior to the approval of the transfer; and

(B) The receiving school district shall consult the resident school district and the parents of the student to determine how FAPE will be provided to the student. Services comparable to those described in the IEP shall be provided until the receiving school district adopts the child's IEP from the resident district or develops, adopts and implements a new IEP that meets IDEA requirements.

(2) Upon approval of the transfer pursuant to the Education Open Transfer Act, the receiving district shall claim the child in the average daily attendance for membership (ADM) for state and federal funding purposes and shall assume responsibility for education of the child. For state funding purposes, the State Department of Education shall include the appropriate grade level weight and all category weights to which the pupil is assigned to calculate State Aid pursuant to 70 O.S. § 18-200.1, et seq.

(c) In the event of an IEP Service Agreement, it is the responsibility of the resident school district to provide transportation to a child who has been granted a transfer for the purpose of providing a free appropriate public education (FAPE). In the event of an open transfer, the receiving school district is responsible for providing transportation if necessary to provide FAPE to the student with a disability.

(1) The need for transportation must be determined on an individualized basis by the IEP team. If the IEP team determines that transportation is a related service the child needs in order to access FAPE, then the service will be provided regardless of the distance the child resides from the school. The need for, frequency, and duration of these services must not be determined by the category of disability, the availability of services, or the distance the child lives from the school where the special education program is to be delivered. If the child requires transportation to receive, benefit from, or obtain access to a special education program, the district shall provide it at no cost to the student. When possible, children on an IEP should be transported with nondisabled peers.

(A) Under federal regulations, transportation and such developmental, corrective, and other supportive services may be required for a child with a disability to benefit from special education. Transportation includes travel to and from school and between schools, travel in and around school buildings, and specialized equipment required to provide transportation to a child with disability, such as special or adapted buses, lifts, and ramps.

(B) The provision of transportation for preschool children with disabilities must be considered on an individual basis by the IEP team. The team must consider transporting a preschool aged child to the site where special education and related services are provided, if that site is different from the site at which the child receives other preschool services.

(C) The school district may provide transportation services directly or contract with parents or some other person to furnish transportation. The miles driven and cost per mile to be paid by the school district should be specified in the IEP. Based on a mutual agreement between two school districts, a school district offering special education classes may extend its transportation services to include the transportation of children qualifying for special education in an adjacent district that does not offer special education classes.

(D) Children with disabilities are entitled to the same length of school day offered to all children as established in Oklahoma state law. Transportation, scheduling, or administrative conveniences are not acceptable reasons for students with disabilities to have shortened school days. Additionally, academic schedules may not be lengthened or shortened to accommodate transportation.

(2) Independent school districts are responsible for providing FAPE to children aged three (3) through twenty-one (21) years old. Elementary school districts are responsible for providing FAPE to children aged three (3) through the highest-grade level of the school. A school district's responsibility to provide transportation to children with disabilities extends to the grade offered by that school district.

(A) If a child transfers to an independent school district upon completion of the highest grade offered by an elementary school district, and the student lives within the independent school's transportation area, that independent district must provide transportation for that child.

(B) Other independent school districts may also enroll any transferred high school child, but they are not required to provide this transportation service outside their transportation area.

(C) In the event that transportation is included as a related service in the IEP and the IEP is reviewed and adopted by the receiving independent school district, the receiving school district will be required to provide transportation regardless of the transportation area where the child resides.

(d) It shall be the duty of each school district to provide gifted child educational programs and to serve those children, as defined in 70 O.S. § 1210. 307. This duty may be satisfied by:

(1) The district directly providing gifted child educational programs for such children;

(2) The district joining in a cooperative program with another district or districts to provide gifted child educational programs for such children;

(3) The district joining in a cooperative program with a private or public institution within such district; or

(4) The district entering into a written agreement with another school district whereby the resident district agrees that the receiving school district will provide appropriate gifted child educational programs.

(A) No transfer shall be made without the consent of the board of education of the receiving school district;

(B) The resident school district shall provide transportation for the transferred student; and

(C) The resident school district shall pay an amount of tuition equal to the proportion of the operating costs of the program to the receiving district

[OAR Docket #12-672; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #12-677]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Reading Sufficiency Act
210:15-27-1. Reading Sufficiency Act [AMENDED]
210:15-27-2. Alternative standardized reading assessments and use of student portfolio for good cause promotion [NEW]
210:15-27-3. Standards for mid-year promotion of retained third graders [NEW]
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70 O. S. § 3-104, State Board of Education
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ANALYSIS:
The rules update the requirements for assessing and identifying students for the program and clarify language that has been amended in previous legislation. The changes update allowable expenditures, and create new rules for mid-year promotion and alternative assessments to be used in place of the Oklahoma Core Curriculum Test in Reading to determine students' ability to read at or above grade level.

Rules implement statutory changes to the Oklahoma Reading Sufficiency Act, enacted with the passage of SB 346 2011 Legislative Session. Rules address third grade retention, good cause exemptions to retention and mid-year promotion, as provided by law.

The rules for the Reading Sufficiency Act (RSA) outline components important to implementation of the program. The rules update the requirements for assessing and identifying students for the program and clarify language that has been amended in previous legislation. The rules also include new sections referencing alternative assessments and mid-year promotion for third graders, beginning 2013-14.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 27. READING SUFFICIENCY ACT

210:15-27-1. Reading Sufficiency Act

(a) ~~No later than September 30, 1998, each~~Each public school district will ~~submit~~develop a district reading sufficiency plan that includes a plan for each site.~~to the State Department of Education for approval.~~ The district reading plan will become a part of each district's Comprehensive Local Education Plan and must be updated annually as part of the requirements for receiving accreditation.

(b) Each school district and each school site shall submit to the State Department of Education the information to be used for the required Reading Sufficiency Act ~~annual~~Annual Reading Report Card. Submission date to be determined by the ~~School Improvement Division~~ Office of Instruction of the State Department of Education.

(c) Each school district will submit to the State Department of Education, the number of students in kindergarten, first, second and third grades found to be in need of remediation in reading based on screening instruments approved by the State Board of Education. Submission date to be determined by the ~~School Improvement Division~~Office of Instruction of the State Department of Education.

(d) Pursuant to the Reading Sufficiency Act, each school district shall submit to the State Department of Education its annual improvement goals necessary to progress from the baseline established September 1, 2005, to achieving the reading goal by July 1, 2008. These improvement goals shall be submitted to the State Board of Education. Submission date to be determined by the ~~School Improvement Division~~Office of Instruction of the State Department of Education.

(e) Contingent on the availability of appropriated funds, the State Department of Education ~~will~~may award up to ~~$150~~$150.00 to public school districts for each currently enrolled first, second, and third grade student who is found to be in need of remediation in reading.

(f) Reading sufficiency funds allocated under this section (e) must be used ~~only~~ for expenses relating to individual and small group tutoring, purchase of and and/or development of instructional training in the use of screening assessment measures, summer school programs, and Saturday school programs, and any other reading program or professional development training contemplated as necessary by the districts to perform the goals of the Reading Sufficiency Act for students in the first, second, and third grades who have been identified by the elementary site as in need of a program of reading instruction.

(g) Each school district with one or more school sites identified for School Improvement shall submit its district reading sufficiency plan to the State Board of Education. Submission date to be determined by the ~~School Improvement Division~~Office of Instruction of the State Department of Education.

(h) The district reading sufficiency plan shall be submitted to the State Board of Education if the district has any schools that are not achieving the annual improvement goals as outlined in the Reading Sufficiency Act. Submission date to be determined by the ~~School Improvement Division~~Office of Instruction of the State Department of Education.

(i) Contingent on the availability of appropriated funds, the State Department of Education ~~will~~may award up to ~~$400~~$400.00 to public school districts for each eligible currently enrolled student who is found not to be reading at grade level and who subsequently participates in a summer academy reading program pursuant to the Reading Sufficiency Act.

(j) Each district will submit the number of eligible students who may participate in an approved summer academy reading program based on results from an approved assessment as outlined in the Reading Sufficiency Act. Submission date to be determined by the ~~School Improvement Division~~Office of Instruction of the State Department of Education.

(k) Reading Sufficiency funds allocated from the student count in (j) ~~must~~may be used for expenses relating to any approved ~~summer academy~~ reading programs for participating eligible students.

(l) Summer academy reading programs for students shall be courses that:

(1) provide at least four (4) weeks of tutoring a half (1/2) day each day for four days,

(2) incorporate the content of a reading program ~~administered by the Oklahoma Commission for Teacher Preparation or ascientifically based reading program administered and approved by the State Board of Education~~ that meets the criteria set forth in the Reading Sufficiency Act.

(3) are taught by teachers who have successfully completed a professional development–institute or program in reading~~ administered by the Oklahoma Commission~~

~~for Teacher Preparation or a scientifically based reading professional development program administered by the State Board of Education~~as prescribed by the statutory provisions of the Reading Sufficiency Act.

(4) include only eligible students not reading at grade level based on results from an assessment approved by the State Board of Education.

(m) Superintendents of districts ~~offering summer academy reading programs~~ will sign and submit an assurance statement that their reading~~program~~program(s)~~has met~~meet the requirements ~~in (k)~~of the Reading Sufficiency Act prior to receipt of funding.

210:15-27-2. Alternative standardized reading assessments and use of student portfolio for good cause promotion

(a) Beginning with the 2013-2014 school year, students who score at the Unsatisfactory level on the Reading portion of the Grade 3 criterion-referenced test(s) may only be promoted to grade four if the student qualifies for a good cause or other statutory exemption pursuant to 70 O.S. § 1210.508C.

(b) Good cause exemptions shall be limited to the six (6) statutory exemptions outlined in 70 O.S. 508C, Section (K).

(1) Completion of transitional grades shall be considered a previous retention for purposes of 70 O.S. § 508C, Section (K). A transitional grade consists of subject area curriculum selected from two consecutive grade levels to provide differentiated instruction needed for a student to master appropriate skills required for promotion.

(2) Students with disabilities who are assessed with alternate achievement standards (AA-AAS) under the Oklahoma School Testing Program (OSTP) with the Oklahoma Alternative Assessment Program (OAAP) qualify for the good cause exemption pursuant to 70 O.S. § 1210.508C(K)(2).

(c) Students who demonstrate an acceptable level of performance on an alternative standardized reading assessment may be granted a good cause exemption for promotion to the fourth grade. To promote a student using an alternative standardized reading assessment, the following criteria shall apply:

(1) The following are approved alternative standardized reading assessments that may be used to justify a good cause promotion pursuant to 70 O.S. § 1210.508C(K)(3). The listed score constitutes an acceptable level of performance, and the student must score at or above the following percentiles:

(A) Stanford Achievement Test, Tenth Edition, (SAT 10) 45th Percentile

(B) Iowa Test of Basic Skills (ITBS) Complete Battery Form A, C or E, Level 9, Reading Comprehension 45th Percentile

(C) Iowa Test of Basic Skills (ITBS) Core Battery, Form A, C, or E, Level 9, Reading Comprehension 45th Percentile

(D) Terranova, Third Edition Complete Battery Level 13, Reading 45th Percentile

(2) Alternative standardized reading assessments may only be administered following the administration of the Reading portion of the Grade 3 criterion-referenced test(s). The spring test form of the exam shall be administered.

(3) An approved alternative standardized reading assessment may be administered at any time prior to the start of the next academic year, if there are at least thirty calendar (30) days between administrations and different test forms are administered.

(d) To promote a student using a student portfolio as a good cause exemption there must be evidence that demonstrates the student's mastery of state standards beyond the retention level and that the student is reading on grade level or higher. To promote a student through the use of a student portfolio, the following criteria shall apply:

(1) The portfolio shall evidence demonstration of the student's mastery of the Oklahoma state standards in reading equal to grade level performance on the Reading portion of the Grade 3 criterion-referenced test(s). Such evidence shall be documented through an organized collection of work representing the student's mastery of such standards.

(2) A student portfolio created to serve as the basis for a good cause exemption must meet the following criteria:

(A) Consist only of grade-level work selected by the student's Reading teacher;

(B) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced in the third grade by the student in the classroom of the student's Reading teacher;

(C) Include clear evidence that the standards assessed by the Reading portion of the Grade 3 criterion-referenced test(s) have been met. Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(i) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(ii) Teacher-prepared assessments.

(D) Each standard and objective assessed by the Grade 3 Reading portion of the criterion-referenced test(s) must include a minimum of four (4) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required.

(E) Be signed by the student's Reading teacher and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's reading achievement level and that the student possesses required reading skills to be promoted to fourth grade.

(e) To promote a student under 70 O.S. § 1210.508C (L), the student's teacher shall compile a student portfolio which demonstrates that the student should be exempted from the academic requirements of the Oklahoma Reading Sufficiency Act. The student portfolio shall indicate that promotion is appropriate based on the record of the student, as documented by a student portfolio.

(1) An exemption based on the record of the student shall exist only if the student has been evaluated for special education services and received a borderline deficiency Full Scale IQ or General Intellectual Ability (GIA) score of seventy (70) to seventy-nine (79) on an intellectual assessment listed in sub-section (1)(B).

(A) Student portfolios compiled pursuant to section (e) of this rule shall contain documentation of the intellectual assessment administered to the student and the respective score report. The intellectual assessment must be administered by a licensed psychologist, certified school psychologist, or certified psychometrist.

(B) The following intellectual assessments may be administered to justify an exemption under this section:

(i) WISC-IV

(ii) Stanford-Binet V

(iii) Woodcock Johnson III Normative Update

(C) An intellectual assessment may only be used to justify this exemption if administered in the current or previous school year of the Grade 3 criterion-referenced test administration. Prior intellectual assessments may not be relied upon as justification for this exemption.

(D) The standard error of measurement (SEM) shall not be considered for purposes of this section.

(2) The student portfolio shall be compiled by the student's Reading teacher and submitted to the school principal for approval. The portfolio shall be signed by the student's Reading teacher and the principal of the school, both attesting that the student meets the requirements of this section.

(3) The student's Reading teacher, in consultation with the school principal, shall determine whether the student qualifies for an exemption pursuant to this rule.

(f) Any student promoted on the basis of a good cause exemption listed in 70 O.S. 508C, Section (K), or exempted from academic requirements pursuant to sub-section (e) of this rule should continue to receive intensive reading instruction and intensive instructional services and supports through the continued implementation of an Academic Progress Plan (APP) to remedy the reading deficiency.

(g) Documentation shall be maintained in the student record of any student promoted on the basis of a good cause exemption listed in 70 O.S. 508C, Section (K), or student exemptions granted pursuant to sub-section (e) of this rule. Documentation shall include the student's criterion-referenced test score, and any documentation relied upon to grant a good cause exemption or exemption pursuant to sub-section (e) of this rule.

210:15-27-3. Standards for mid-year promotion of retained third graders

(a) District school boards of education shall adopt and implement a policy for the mid-year promotion of any student retained in third grade due to a reading deficiency as required by 70 O.S. § 1210.508C. Such mid-year promotions of retained third grade students must occur during the first semester of the academic year, and must occur prior to November 1 of that academic year.

(b) To be eligible for mid-year promotion, a student must demonstrate by reasonable expectation that he or she:

(1) Is a successful and independent reader as demonstrated by reading at or above grade level;

(2) Has progressed sufficiently to master appropriate fourth grade reading skills; and

(3) Has met any additional requirements, such as satisfactory achievement in other curriculum areas, as determined by the policies of the district school board.

(c) Standards that provide a reasonable expectation that the student has met the requirements of section (b) of this rule include demonstrating a level of proficiency required to score above the Unsatisfactory level on the Grade 3 criterion referenced test(s) and mastery of reading skills, consistent with the month of promotion to fourth grade, as presented in the scope and sequence of the school district's core reading program. Evidence of demonstrated mastery shall be shown by the following:

(1) Successful completion of portfolio elements that meet state criteria in subsection (d) of this rule; or

(2) Satisfactory performance on a subsequent alternative standardized assessment as specified in section (e) of this rule.

(d) To promote a student mid-year using a student portfolio as provided for in paragraph (c)(1) of this rule, there must be evidence of the student demonstrating a level of proficiency required to score above the Unsatisfactory level on the Oklahoma state standards as assessed by the Reading portion of the Grade 3 criterion-referenced test(s), and mastery of the Oklahoma state standards as assessed by the Reading portion of the Grade 4 criterion-referenced test(s), as specified in section (b) of this rule. The student portfolio must meet the following requirements:

(1) Consist only of work selected by the student's Reading teacher;

(2) Be an accurate representation of the student's reading achievement level, and only include work that has been independently produced by the student in the classroom of the student's Reading teacher;

(3) Include evidence demonstrating a level of proficiency required to score above the Unsatisfactory level on the standards assessed by the Reading portion of the Grade 3 criterion-referenced test(s) by meeting all requirements set forth in 210:15-27-2(d);

(4) Include evidence of beginning mastery of fourth grade state standards that are assessed by the Grade 4 Reading portion of the criterion-referenced test(s). Clear evidence must include multiple choice items and passages that are 50% literary text and 50% expository text that are between 200-600 words, with an average of 350 words. Such evidence could consist of:

(A) Chapter or unit tests from the district's adopted core reading curriculum that are aligned with the Oklahoma State Standards; or

(B) Teacher-prepared assessments;

(5) Each standard and objective assessed by the Grade 4 Reading portion of the criterion-referenced test(s) must include a minimum of three (3) work samples of mastery whereby the student attained a grade of 70% or above. Demonstrating mastery of each objective for each standard is required; and

(6) Be signed by the Reading teacher and the principal of the school, both attesting that the portfolio is an accurate assessment of the student's ability and that the student possesses the required reading skills to be promoted to fourth grade.

(e) To promote a student mid-year using an alternative standardized assessment as provided for in sub-section (c)(2) of this rule, there must be evidence that the student scored at or above grade level on the reading portion of an alternative standardized reading assessment listed in OAC 210:15-27-2(c)(1), as demonstrated by standard scores or percentiles consistent with the month of promotion to the fourth grade.

(f) The Academic Progress Plan (APP) for any retained third grade student who has been promoted mid-year to fourth grade must continue to be implemented for the entire academic year.

(g) A mid-year promotion shall only occur upon agreement of the parent or legal guardian of the student, and the principal of the school. Such decision should be made in consultation with the student's third and fourth grade teachers.

[OAR Docket #12-677; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 15. CURRICULUM AND INSTRUCTION

[OAR Docket #12-676]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 34. Supplemental Online Course Procedures [NEW]
210:15-34-1. General provisions [NEW]
210:15-34-2. Access [NEW]
210:15-34-3. Funding [NEW]
210-15-34-4. School day [NEW]
210:15-34-5. Student eligibility, admissions & enrollment [NEW]
210:15-34-6. Grading scales [NEW]
210:15-34-7. Student information system [NEW]
210:15-34-8. Course withdrawal grace period [NEW]
210:15-34-9. Course completion [NEW]
210:15-34-10. Attendance [NEW]
210:15-34-11. Extracurricular and co-curricular activities [NEW]
210:15-34-12. Student assessments [NEW]
210:15-34-13. Communications: progress reports [NEW]
210:15-34-14. Online course providers [NEW]
210:15-34-15. Payment [NEW]
210:15-34-16. Special education [NEW]
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The rules permit students enrolled in their district to take up to 5 hours of online instruction, while the remaining hour will be provided physically on a school campus. The rules delineate roles and responsibilities of local education agencies as to the proper implementation of supplemental online courses. In addition, the rules clearly dictate that all students are eligible to take supplemental online courses. Pursuant to Senate Bill 280 the rules create the Oklahoma Supplemental Online Course Program, which authorizes school districts to spend state-aid dollars for students to enroll in supplemental courses provided by third party providers.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 34. SUPPLEMENTAL ONLINE COURSE PROCEDURES

210:15-34-1. General provisions

(a) **Purpose.** The purpose of this program is to make supplemental learning opportunities available to local school district students using online technology in a nontraditional classroom setting, (i.e., inside or outside of public school site locations). The supplemental online course enrollment options are for public school students enrolled in the district. This rule establishes policies and procedures as directed by 2011 Senate Bill 280, which amends Oklahoma Statute Title 70, Section 1-111.

(b) **General Information.** The Oklahoma Supplemental Online Course Program (hereafter referred to as OSOCP), establishes a framework for districts to offer supplementary online courses to any public student residing in Oklahoma. All OSOCP teachers shall be: 1) appropriately certified in accordance with Oklahoma Administrative Rule 210:35-21-2 to teach in the content area of the course offered, or 2) a faculty member at an accredited institution of higher education, possessing the specific content expertise necessary to teach the course. All courses offered through OSOCP shall be aligned

with *Oklahoma's Priority Academic Student Skills (PASS)* curriculum standards and/or *Common Core State Standards (CCSS)*. Local districts have control regarding the method by which they deliver online courses to enrolled students.

(c) **Definitions.**

(1) **Supplemental online course.** An online program that allows students who are enrolled in a public school to supplement their education by enrolling part time in online courses that are educationally appropriate for the student, which are equal to the equivalent of classroom instruction time required for student attendance and participation by the district.

(2) **Educationally appropriate.** For the purposes of supplemental online courses, educationally appropriate means an instructional delivery method best suited for an individual student to advance the student's academic standing toward meeting the learning expectations of the district and State graduation requirements for the student. The determination of educationally appropriate will be made at local district level.

210:15-34-2. Access

Only public school students enrolled in the district will be granted access to supplemental online courses. Each Oklahoma public school district shall provide enrolled students the opportunity to participate in supplemental online courses that comply with the standard curriculum of the public school. Once a student has made a request to enroll in supplemental online course(s), the district will be obligated to take necessary steps to determine the educational appropriateness of the request and to make online course(s) available to the student. Oklahoma public school students may take supplemental online courses from any online course provider selected and approved by the district that meets the criteria established by the Oklahoma State Board of Education. The school district shall not limit a student's access to supplemental online courses by either policy or application of internal or customary procedures. However, students taking supplemental online courses from a remote location will be responsible for providing their own equipment and Internet access.

210:15-34-3. Funding

The yearly revenue received in the General Fund from all sources of revenue for districts may be used by districts to purchase one or more courses per student from any online course provided that meets the criteria established by the Oklahoma state Board of Education. A school district shall provide funding for online courses in an amount not to exceed the previous year's general fund per pupil expenditure. Public school students will be allowed to take up to the academic equivalent of five (5) hours of supplemental online instruction per day at no cost to the student. Districts shall not be required to dedicate more than the pro-rated portion of the previous year's per pupil expenditure towards payment for online courses so that the appropriate portion of funding is allocated to correspond with the number of online course hours the student has enrolled in. Students wishing to take more online course instruction may do so, but the cost to the district for such additional courses cannot exceed the pro-rated portion of the general fund per pupil expenditure for the student. No district will be financially responsible to pay an online course provider for online course instruction expenses incurred by a student that exceeds the pro-rated portion of the general fund per pupil expenditure for the student. The funding restrictions in no way will effect, prohibit or prevent any student from enrolling in additional online courses at the expense of the student or student's parent or guardian. Districts will also bear no responsibility for payment or collection of any outstanding funds or fees owed by a student to an online course provider.

210:15-34-4. School day

Students may take OSOCP courses from a location inside or outside of the school site location, and may take supplemental online courses outside the normal school hours of operation. Students who elect to enroll in supplemental online courses, regardless of when or where taken, are still required to complete the equivalent number of hours of instruction as regularly enrolled students in the district and must satisfy the same attendance requirements of the district. For purposes of supplemental online courses, one credit may be granted for required or elective courses consisting of a minimum of 120 instructional hours or in which students demonstrate mastery of Oklahoma's *PASS* and/or *CCSS* in one-credit courses without specified instructional time. The local district shall establish local policy regarding attendance standards for supplemental online students in accordance with these rules.

210:15-34-5. Student eligibility, admissions & enrollment

Online supplemental courses that are educationally appropriate shall be offered to all qualifying Oklahoma school students who meet the following criteria:

(1) **Eligibility.** Districts shall offer individual academically approved and educationally appropriate online supplemental courses to students who are enrolled in the local school district. Students enrolled in supplemental online courses through the local public school district must meet all enrollment and eligibility criteria set by the district, the Oklahoma State Board of Education Rules, and Oklahoma State Statutes. Districts may use their existing residency determination policy utilized for registration/enrollment so long as the policy complies with all current rules and statutes regarding residency, transfers, and enrollment. Only students who are enrolled in the public school for the current school year are eligible to enroll in supplemental online courses through OSOCP.

(2) **Admissions.** Each accredited public school district shall apply their locally adopted admissions process for regular enrollment to satisfy enrollment requirements for online students. The admission process for students taking one or more supplemental online courses through a public

school district shall be the same for students enrolled in traditional coursework.

(3) **Enrollment in supplemental online courses.** Each local school board shall adopt a policy for enrollment in supplemental online courses. However, the local policy cannot prohibit or deny a student the opportunity to enroll in supplemental online courses that are educationally appropriate for the student. The local school district policy shall allow for ongoing and continuous enrollment for supplemental online courses that are compliant with the state statute and all applicable Administrative Code Rules. Students may have input as to the selection of supplemental online course providers but the final determination and selection of the provider(s) is left to the discretion of the local district. No enrollment in a supplemental online course will be allowed until the parent or legal guardian has signed the Oklahoma State Department of Education Student Assessment Results Release Form or FERPA waiver. If a school district denies a student's enrollment in a supplemental online course based upon a determination that the course is not educationally appropriate, the local school board enrollment policy must contain a process for the parents or guardians of the student to appeal that determination. Districts will notify the State Department of Education immediately of any denial of a student's enrollment in online supplemental course(s), the reasons given for the denial, and any correspondence or information the district received in support of the student taking the online course(s). Notice shall be directed to the Director of Instructional Technology at the State Department of Education.

(4) **Course codes and course credit transferability.** For the purpose of data collection, supplemental online courses shall employ the appropriate course codes, names, and numbers as established by the Oklahoma State Department of Education. All public school districts in Oklahoma shall recognize course credit issued for courses authorized through OSOCP.

(5) **Reporting course completion or change in enrollment status.** Supplemental online course providers shall officially notify school districts and parents in writing of the completion of each course the student takes within five (5) business days of completion. Course grades must be reported in the form of a percentage or in a manner consistent with local school grading policies. Local districts shall use the district's established grading scale to convert the percentage to a letter grade or other notation consistent with local school grading policies for transcript purposes. Providers must also report any change in a student's status (moving, dropping a course, etc.) immediately upon discovery or notification of the student's change in status.

210:15-34-6. Grading scales

School district policies governing grading scales and credits earned shall be applied to OSOCP courses under the same criteria as courses offered by the school district. A grade assigned for course credit that was completed through the OSOCP shall be treated the same as any other course offered by the district.

210:15-34-7. Student information system

Each district shall use the Oklahoma State Department of Education's electronic student information system to document enrollment in a supplemental online courses. The online provider for the course shall be coded to the individual student's enrollment record.

210:15-34-8. Course withdrawal grace period

Each local school board shall adopt policies for a grace period for withdrawal from a supplemental online course of fifteen (15) calendar days from the first day of a supplemental online course enrollment as required by 70 O.S. § 1-111(C) (6). A student who withdraws during the fifteen (15) day grace period may withdraw from the supplemental online course without academic penalty. A student who withdraws from any supplemental online course is still obligated to complete the equivalent number of classroom hours of educational instruction that is required of students in the district in accordance with state law and local district policy. No school district shall be required to pay an online course provider for any student enrollment of less than (15) fifteen calendar days.

210:15-34-9. Course completion

Supplemental Online courses are an optional avenue for instruction. All existing requirements related to student progression including retention, promotion, and grade assignment are the same for the school district's online students as they are for students enrolled in traditional courses. Each local school board shall ensure that students have the opportunity to advance through the supplemental online course at their own pace so long as the supplemental online course completion corresponds with the standard course completion schedule of the district or the student's Individualized Education Program (IEP) or 504 Plan.

210:15-34-10. Attendance

Students enrolled in supplemental online courses must meet all state mandated compulsory attendance requirements and are not exempt from state truancy laws. Attendance/participation in a supplemental online course shall be monitored in accordance with local district policy and determined by documented student/teacher/course interaction that may include, but is not limited to, online chats, emails, posting/submission of lessons, etc. The student may be counted "present" or "in attendance" when the supplemental online course provider provides evidence of student/teacher/course interaction that demonstrates student progress toward learning objectives and demonstrates regular student engagement in course activity. Supplemental online course providers shall make available to students, parents, and districts reports that

reflect daily attendance/participation. Such attendance/participation reports shall be provided to parents and districts on a regular weekly basis via electronic format unless required more frequently by the local district. The supplemental online course provider must provide evidence that the student is making appropriate progress weekly and such reports shall be sent to the designated resident district office via electronic format unless required more frequently by the local district.

210:15-34-11. Extracurricular and co-curricular activities

Students who are enrolled in one or more supplemental online courses may participate in extracurricular activities sponsored by the district in which they are enrolled in accordance with state law and regulations governing participation as set forth in 70 O.S.§ 1-111(C)(8).

210:15-34-12. Student assessments

Students enrolled in online courses must participate in required state-level academic assessments in the same manner as other regularly enrolled students within the state. No student will be allowed to enroll in an online course without submission of a signed Education Student Assessment Results Release Form or FERPA waiver. available on the Oklahoma State Department of Education (OSDE) Web site at <www.sde.state.ok.us>. Each local school board shall adopt a policy that requires and ensures each student enrolled in one or more online courses will participate in state assessments administered pursuant to state statute and that the results of the assessments are released to the school district and the online course provider(s).

210:15-34-13. Communication: Progress reports

Local school districts shall establish a method for districts to accept transmissions of progress reports and grades for students enrolled in supplemental online courses. Students enrolled in supplemental online courses shall have their progress monitored by the supplemental online course provider weekly unless more frequent reporting is required by the local district. Progress reports shall be transmitted to the designated district representative and parent(s)/guardian(s) via electronic format. Such reports shall be reviewed regularly by the district at least twice per month unless more frequent review is required by the local district.

210:15-34-14. Online course providers

Each supplemental online course provider seeking to serve Oklahoma public school districts must demonstrate compliance with Oklahoma State Board of Education guidelines by completing the Oklahoma State Department of Education School District Virtual Instruction Vendor Form. This form is available on the OSDE web site, <www.sde.state.ok.us>. Vendor forms shall be submitted to the OSDE with a list of all course offerings that meet Oklahoma educational standards and shall include a price list of the cost of each course offered by that Vendor for the current fiscal year. The Vendor Form will be posted on the OSDE Web site and must be updated annually by the Vendor by July 1st of each fiscal year. The course offerings and price schedules listed by each Vendor should be honored by the Vendor for a full fiscal year. No vendor shall be allowed to charge a price to the districts for an online course that is higher than the price listed in the OSDE Vendor Form on file with the OSDE unless the district enters into a contract for additional services. A district may choose to negotiate a lower price with the vendor or choose to pay a higher price. Districts may provide vendor feedback to the Oklahoma State Department of Education through its website. The Department will maintain all vendor and course feedback comments received from districts on its website for two (2) years from the date of receipt.

210:15-34-15. Payment

A price schedule for each supplemental online course for each online vendor shall be listed and maintained by the State Board of Education for the current academic year. The local school district shall only be required to pay the price listed by the vendor for that academic year. A district may choose to negotiate a lower price with the vendor. The local school district shall use standard payment procedures that comply with the uniform Oklahoma Cost Accounting System (OCAS) for reporting of supplemental online course expenses. Selection and payment for supplemental online courses for the student is the responsibility of the local public school district. Payment to the provider will be based upon continued course enrollment and subsequent course completion. Final payment to the provider shall be made in accordance with the district's procurement policies or as otherwise negotiated by the district with the vendor by contract. All vendor contracts must comply with all State Department of Education rules and regulations.

210:15-34-16. Special education

Local school districts shall provide supplementary aids and services, program modifications, supports for personnel and accommodations set forth in a student's IEP or Section 504 Plan to enable a student to take supplemental online courses as defined in section 210-15-34-(c)(1)(2) of these rules that have been determined to be educationally appropriate for the student. Provisions in the IEP for related services shall be the responsibility of the local school district where the student is enrolled in accordance with the Individuals with Disabilities Education Act (IDEA). Enrollment in supplemental online course does not abdicate, modify or alter the school district's legal responsibility under IDEA.

[OAR Docket #12-676; filed 5-22-12]

TITLE 210. STATE DEPARTMENT OF EDUCATION
CHAPTER 30. SCHOOL FACILITIES AND TRANSPORTATION

[OAR Docket #12-675]

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Subchapter 5.Transportation
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The rules establish a process by which insulin dependent individuals may be employed as bus drivers and sets forth eligibility requirements and monitoring requirements for both the individual and the employing school district. The prior rule contained an absolute prohibition relating to insulin dependent individuals serving as bus drivers. Amendments bring SDE rules into compliance with the Americans with Disabilities Act.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 26, 2012:

SUBCHAPTER 5. TRANSPORTATION

210:30-5-1. District operation and management

(a) **Administration.** The local superintendent and board of education shall be held responsible for applying these regulations to all pupil transportation under their administration and supervision. In keeping with this responsibility, each local board of education shall examine and periodically review the school district's bus fleet liability insurance coverage and its tort liability insurance coverage to assure such coverages are coordinated to protect the interest of the students, general public, and school district. Any school district maintaining a school may provide transportation with the approval of the State Board of Education.

(b) **Students.**

(1) A student must live in a school district authorized by law to furnish transportation.

(2) A student must live one and one-half (1 1/2) miles or more by commonly traveled road from the school attended. Students living less than one and one-half (1 1/2) miles from school may be transported, but shall not be counted in determining state aid.

(3) A normal school day consists of not less than six (6) hours, exclusive of lunch period, with the exception of the first and kindergarten grades. Transportation may be provided for kindergarten age students to and from school during the normally scheduled morning and evening bus operation. Districts desiring to provide additional transportation for kindergarten students at midday may do so at local district expense but it is not required.

(4) The local school district is responsible for providing transportation for an eligible special education student when transportation has been identified as "related service" necessary to enable the student to receive the educational services outlined in his/her Individualized Education Program (IEP).

(5) Students living in a school district not offering the grade which they are entitled to pursue are entitled to transportation to a school authorized by law to provide transportation to and from school provided they have been legally transferred and reside in the transportation area.

(c) **Activities.** All Oklahoma school districts shall develop policies and procedures authorizing transportation for extracurricular activities and community involvement purposes as authorized by 70 O.S. § 5-130.

(d) **Routes and boundaries.** All school bus routes shall be evaluated annually for safety and efficiency by the local school district supervisor of transportation or designee.

(1) **Boundaries.**

(A) A change in transportation area made after July 1, will not become effective until the next July 1, unless all boards of education affected agree to the proposed change.

(B) An elementary area that has been assigned to a high school transportation area may be changed to another high school transportation area by mutual agreement, in writing, by the three (3) boards of education affected and the approval of the State Board of Education.

(C) A part or all of an elementary school district that is isolated from the remainder of the school district's transportation area because of topography or previous annexations to another high school district, may be changed from one high school district's transportation area to another high school district's transportation area if the State Board of Education determines the change should be made on the basis of good administration.

(D) When a dependent school district is surrounded by an independent school district, that district must be designated as the transportation area for the high school students.

(E) An independent school district's transportation route may extend into a dependent school district's territory to pick up students whose grade is not offered in the dependent district.

(F) Upon mutual agreement of two (2) school districts, a school district may cross a portion of another district provided the doors of the school bus are kept closed.

(2) **Petition for changing boundary lines.**

(A) Seventy percent (70%) of the legal voters residing in a district who have children eligible to attend a public school (grades K through 12) or who have children under the age of five (5) may petition the State Board of Education for an election to change any part or all of a district from one transportation area to another.

(B) The State Board of Education will approve a convenient date for an election, supply ballots, and send a representative to assist with the election.

(C) If fifty-one percent (51%) of all such legal voters in the district vote for the change, the election makes a good recommendation to the State Board of Education.

(3) **Changing areas, high school districts discontinued.** High school districts and/or elementary school districts that must be placed in one or more high school transportation area or areas because a high school has been discontinued may be placed in a transportation area or areas on the following basis:

(A) All or part of District "A" may be placed in the transportation area of high school District "B", whose transportation area is not adjacent to District "A", provided high school District "C", which has transportation area that separates District "A" from District "B" transportation area, appears to be in jeopardy of being discontinued itself, and provided the number of people in District "A", who want to be placed in the transportation area of District "B", justifies such an arrangement. People in District "A" requesting these arrangements to enable them to annex to District "B" will be given much more consideration than those desiring to transfer only.

(B) No portion of a school district that is adjacent to a high school district's transportation area, but is separated from the high school area by a natural barrier, will be placed in the high school district's transportation area unless or until there is a road connecting the two (2) areas that is maintained in a manner that will justify the operation of a school bus over the road across the barrier.

(e) **School bus.**

(1) **Equipment.**

(A) Transportation equipment used to transport ten (10) or more public school children at one time shall meet all the minimum standards required for Types A, B, C, and D buses.

(B) Vehicles having a seating capacity of fewer than (10) passengers, excluding the operator, are not required to meet the State minimum standards for school buses.

(2) **School bus inspections.**

(A) A driver shall perform a daily pre-trip safety inspection of the vehicle. The inspection shall include brakes, lights, tires, exhaust system, gauges, windshield wipers, steering and fuel. The driver shall make a daily written report describing the condition of the bus and listing any deficiencies. This report is to remain on file with the local Chief Administrative Officer or designee for a period of ninety (90) days.

(B) A school district shall have each school bus mechanically inspected annually by an inspector approved by the Oklahoma State Department of Education.

(C) At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices, and participate in emergency evacuation drills. This instruction should be conducted during the first two weeks of each semester.

(3) **School bus inspector qualifications.**

(A) Any person licensed to inspect school buses by the Department of Public Safety under the Motor Vehicle Laws of Oklahoma prior to July 1, 2001, may be qualified to perform annual school bus inspections.

(B) Any person not meeting the qualifications as prescribed in (A) may be qualified to perform the annual school bus inspection by submitting proof to the Oklahoma State Department of Education that they meet the following qualifications:

(i) Two years experience as an automotive technician and certification by the Association for Automotive Service Excellence (ASE), or

(ii) Any person qualified to perform inspections under the Federal Motor Carrier Safety Act, appendix G.

(iii) Any person successfully completing an Inspector's Training Course approved by the Oklahoma State Department of Education.

(4) **Standards and school bus specifications.**

(A) The NATIONAL MINIMUM STANDARDS FOR SCHOOL BUSES applies to school bus construction and equipment. The Oklahoma State Board of Education has accepted the various methods bus manufacturers use to meet the requirements of these standards and all requirements under the Federal Motor Vehicle Safety Standards. (P.L. 89-563) The responsibility for compliance with Federal and State bus specifications rests with dealers and manufacturers.

(B) State Standards in addition to Federal Requirements also apply as follows:

(i) No school district may purchase any used or previously owned school bus unless the seller certifies prior to the sale, that the bus meets all safety standards and specifications for the date of manufacture of the used bus. Any school district that purchases a used or previously owned bus without the certification regarding compliance with standards shall forfeit their state transportation aid. The seller of any used or previously owned school bus shall certify to the local board of education that any such transportation equipment meets all Oklahoma and National Standards required for the date of its manufacture.

(ii) Church buses used for the purpose of transporting children to and from schools accredited by the State Department of Education shall be painted national school bus yellow.

(C) School districts that convert or have converted school buses to Liquefied Petroleum Gas (LPG) shall comply with safety standards prescribed by the National Fire Protection Association, Standard No. 58 (NFPA-58) and the Oklahoma Liquefied Petroleum Gas Administration. In order to insure safe installation and proper maintenance of equipment, all personnel must also meet the following existing requirements of the Oklahoma Liquefied Petroleum Gas Administration: "No person, firm, corporation, association, or other entity shall engage in the manufacturing, assembling, fabrication, installing, or selling of any system, container, or apparatus to be used in this State in or for the transportation, storing, dispensing, or utilization of LPG, nor shall any transporter, distributor, or retailer of LPG store, dispense and/or transport over the highways of this State any LPG for use in this State in any system, container, apparatus, or appliance without having first obtained a permit to do so as provided..."

(f) **Special education.**

(1) **Loading responsibility.** The local school district is responsible for the special education child from the time the student is loaded at the "home curb" until returned and unloaded at the "home curb". The parent or their designee is responsible for "door-to-curb", "curb-to-door", and "street crossing" of the child to the designated loading and unloading point.

(2) **Extended boundaries.** Based upon mutual agreement between two participating school districts, a school district offering special education classes may extend its transportation program to include the transportation of students qualifying for special education in an adjacent school district which does not offer special education classes.

(g) **School bus driver certification.**

(1) **General criteria.**

(A) No board of education shall have authority to enter into any written contract with a school bus driver who does not hold a valid certificate issued by the State Board of Education authorizing said bus driver to operate a school bus.

(B) The State Board of Education requires all public school bus drivers to complete a school bus drivers training course approved by the State Department of Education to obtain a standard certificate.

(C) All school bus drivers must have not less than 20-40 vision (Snellen) in each eye and not less than 20-40 vision (Snellen) with both eyes and a minimum field of vision of 70 degrees horizontal median vision in each eye.

(D) Any person with diabetes requiring insulin by injection shall not be eligible for a school bus certificate~~.~~ unless the individual possesses and maintains a diabetic/medical exemption from the Oklahoma Department of Public Safety (DPS) or the Federal Motor Carrier Safety Administration (FMCSA), and has met all physical examination requirements of sub-section (I) of this section. Upon hire, exempted individuals will be required to:

(i) Self-monitor their current blood glucose level one (1) hour prior to driving and approximately every four (4) hours after that time while driving a school bus by using a portable glucose monitoring device with a computerized memory, and take corrective action if necessary;

(ii) Maintain blood glucose logs, three months from the current date (or the date that insulin use began, whichever is shorter). If the employing district has cause to require a medical evaluation as authorized by sub-section (G), logs maintained pursuant to this sub-section must be provided to the medical doctor (MD) or doctor of osteopathy (DO) treating the individual. Blood glucose logs must be created by an electronic blood glucose meter that stores every reading, records date and time of reading, and from which data can be downloaded and printed.

(iii) Carry a source of rapidly absorbable glucose at all times while operating a school bus; and

(iv) Be examined annually by an Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) who attests in writing:

(I) The individual demonstrates and has demonstrated a willingness to monitor and manage his or her diabetes;

(II) The individual is not likely to suffer any diminution in his or her driving ability due to diabetes.

(E) Superintendents or their designees who hire individuals who hold a diabetes exemption certification must keep on file in a separate medical record:

(i) A current copy of the diabetes exemption certificate of the individual;

(ii) The contact information of the board certified medical doctor (MD) or doctor of osteopathy (DO) who is treating the individual;

(iii) Record of the annual medical certification issued by the board certified medical doctor (MD) or doctor of osteopathy (DO) pursuant to sub-section (D) of this section; and

(iv) Copies of any medical certifications obtained pursuant to sub-section (G) of this section.

(F) Superintendents or their designees shall not allow an individual holding a diabetes exemption certificate to drive if their blood glucose level is outside of a range of 100 mg/dl to 400 mg/dl one (1) hour prior to driving. If the individual's blood glucose level is below 100 mg/dl or above 400 mg/dl, then the operator cannot operate a school bus or transport school children as an employee of any school district until the blood glucose measure is within the target range.

(G) In the event an individual holding a diabetes exemption is involved in an incident directly caused by the individual's diabetic condition, the individual cannot operate a school bus or transport school children as an employee of any school district until the individual has been certified in writing as medically able to safely resume work related duties by the Oklahoma board certified medical doctor (MD) or doctor of osteopathy (DO) by whom they are being treated.

(~~E~~H) The use of tobacco by a school bus driver is not permitted during the operation of the bus while hauling pupils. The use of any intoxicating or non-intoxicating alcoholic beverage by the driver eight (8) hours prior to or during the operation of a school bus is strictly prohibited. The use of any controlled dangerous substance seventy-two (72) hours prior to or during the operation of a school bus is strictly prohibited. The possession of any controlled dangerous substance on a school bus is strictly prohibited.

(~~F~~I) All school bus drivers shall have an annual health certificate signed by a physician licensed by this state filed in the office of the local Chief Administrative Officer or designee attesting that such physician has examined the applicant and that the applicant has no sign or symptoms of ill health, and is otherwise, from the observation of such physician, physically and mentally capable of safely operating a school bus. As an alternative to the annual physical examination requirements for school bus drivers, school districts may adopt a policy that utilizes a biannual physical examination, provided the examination is in compliance with the physical qualifications and examination requirements of the Federal Motor Carrier Safety Act, Subpart E 391.41 to 391.50.

(~~G~~J) Substitute and activity school bus drivers shall meet all the requirements prescribed for regular bus drivers.

(~~H~~K) At a minimum, the Chief Administrative Officer or designee shall conduct an annual driving record check of all school bus drivers, including substitute and activity drivers. The Oklahoma State Department of Education shall be immediately notified of any violation(s) that make a school bus driver ineligible to hold an Oklahoma School Bus Driver's Certificate.

(L) The State Board of Education shall revoke the license of any certificate holder who fails to comply with the provisions of this section.

(M) School districts who fail to comply with the provisions of this section shall be subject to penalty pursuant to OAC 210:30-5-2.

(2) **Certificate requirements.**

(A) The Chief Administrative Officer or designee shall certify to the State Department of Education that each applicant submitted for Standard Five-Year Certification:

(i) Is at least 18 years of age.

(ii) Has successfully completed a special school bus drivers' course approved by the State Department of Education.

(iii) Holds a valid Commercial Drivers license (CDL) appropriate for the type of vehicle driven with the proper endorsements required by the Department of Public Safety.

(iv) Has not been convicted, plead guilty, or nolo contendere to a felony during the last ten years.

(v) Has passed a driving record check, and no certificate shall be issued to any person who, within the preceding three years:

(I) Has had a license suspended or revoked, canceled or withdrawn pursuant to the Implied Consent Laws at 47 O.S. §751 et seq.

(II) Has a conviction for a violation of 47 O.S. §11-902 which includes driving, operating or being in actual physical control of a vehicle while under the influence of alcohol or any intoxicating drug.

(III) Has been convicted or plead guilty to a violation of 47 O.S. §761, operating a motor vehicle while impaired by consumption of alcohol.

(IV) Has been convicted of any municipal violation of driving under the influence of alcohol or drugs or operating a motor vehicle while impaired or being in actual physical control of a motor vehicle while impaired.

(V) Has had four or more traffic violations. (excluding parking violations)

(B) The Chief Administrative Officer or designee shall certify to the State Department of Education that the applicant for an Emergency One-Year School Bus Driver Certificate (Not Renewable).

(i) Is at least 18 years of age.

(ii) Holds a valid Commercial Drivers License with the proper endorsements required by the Department of Public Safety.

(C) Requirements for Renewal of the Standard Five-Year Certificate include:

(i) Every five years, each driver shall have successfully completed 4 hours per year of inservice training approved by the State Department of Education.

(ii) The local Chief Administrative Officer or designee shall certify to the State Department of Education that the applicant meets all requirements for standard certification, [47 O.S. § 15-109]

(iii) Each applicant has a health certificate on file signed by a licensed physician and meets all vision requirements.~~and is not dependent upon insulin by injection,~~

(iv) Each applicant has not been convicted or plead guilty of a felony in the last ten years, and

(v) A driving record has been checked and meets State Board of Education requirements for certification.

[OAR Docket #12-675; filed 5-22-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

[OAR Docket #12-734]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Environmental Permit Process
Part 7. Water Quality Division Tiers and Time Lines
252:4-7-73 [AMENDED]
252:4-7-74 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S.§ 2-2-201; and 27A O.S.§§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.
DATES:
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Submitted to Governor:
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Submitted to House:
March 2, 2012
Submitted to Senate:
March 2, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2012
Final adoption:
May 1, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The DEQ proposes to amend OAC 252:4 to include new water reuse systems in the environmental permitting process. The proposed rulemaking classifies applications for permits to construct new water reuse treatment systems and new water reuse distribution systems as Tier II applications. It also classifies applications for modifications to existing water reuse systems as Tier I applications.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 7. WATER QUALITY DIVISION TIERS AND TIME LINES

252:4-7-73. Water quality applications - Tier I

The following water quality authorizations require Tier I applications.

(1) Permit for flow-through impoundment(s) as part of the pretreatment process.

(2) Permit renewal for a facility with an expiring permit for industrial non-discharging impoundment or industrial septic tank system.

(3) Permit renewal for an expiring permit with minor or no change(s) for land application of sludge and/or ~~waste-water~~ reclaimed water for same site.

(4) New, modified or renewed authorization under a general permit.

(5) Approval of new pretreatment program.

(6) Closure plan approval.

(7) Certifications issued pursuant to Section 401 of the Clean Water Act.

(8) Approval of exemption for water line extensions.

(9) Approval of exemption for water distribution, water reuse distribution and wastewater collection systems.

(10) Approval for alternative individual on-site sewage treatment systems.

(11) Approval for alternative small public on-site sewage treatment systems.

(12) Residential development approval.

(13) Transfer of discharge permit.

(14) Minor modification of discharge permit.

(15) Modification of an existing individual municipal permit for land application of biosolids and/or ~~wastewater~~ reclaimed water.

(16) Modification of or addition to an existing permitted municipal wastewater treatment system (including sewer line extensions).

(17) Modification of or addition to an existing permitted public water supply treatment and/or distribution system (including line extensions).

(18) Modification of or addition to an existing permitted water reuse treatment and/or distribution system (including line extensions).

(~~18~~ 19) Modification of or addition to an existing permitted industrial non-discharging impoundment, industrial septic tank system, and/or industrial wastewater treatment system.

(~~19~~ 20) Modification of an approved pretreatment program.

(~~20~~ 21) Administrative amendment of permits or other authorizations for the correction of administrative or typographical errors.

(~~21~~ 22) New, modified or renewed individual categorical or significant industrial user pretreatment permit.

(~~22~~ 23) Modification of or addition of impoundment(s) to an existing permitted industrial wastewater treatment system.

252:4-7-74. Water quality applications - Tier II

The following water quality authorizations require Tier II applications.

(1) Permit to construct a new municipal wastewater treatment, and/or collection system, excluding line extensions.

(2) Permit to construct a new public water supply treatment and/or distribution system, excluding water line extensions.

(3) Permit to construct a new water reuse treatment and/or distribution system, excluding line extensions.

(~~3~~ 4) New discharge permit for minor facility.

(~~4~~ 5) Individual storm water permit.

(~~5~~ 6) New permit for industrial non-discharging impoundment, industrial septic tank, or industrial wastewater system.

(~~6~~ 7) New individual permit for land application of sludge, biosolids and/or ~~wastewater~~reclaimed water.

(~~7~~ 8) Permit renewal for a facility with expiring discharge permit.

(~~8~~ 9) Permit renewal for a facility with expiring individual storm water discharge permit.

(~~9~~ 10) Variance including thermal components of effluent limitations for an individual discharge permit.

(~~10~~ 11) Major modification of discharge permit.

(~~11~~ 12) Modification of an individual industrial permit for land application of sludge and/or wastewater.

(~~12~~ 13) New, modified or renewed general permit.

[OAR Docket #12-734; filed 5-25-12]

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

[OAR Docket #12-650]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:100-1-3 [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, Air Quality Advisory Council, 27 A O.S. §§ 2-2-201 and 2-5-107, and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 *et seq.*
DATES:
Comment period:
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March 2, 2012
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April 13, 2012
Legislative approval:
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 1, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to:

(A) modify Subchapter 1 to complete the incorporation of the U. S. Environmental Protection Agency's (EPA's) recent changes to the Prevention of Significant Deterioration (PSD) and Part 70 permitting programs exempting biogenic carbon dioxide (CO_2) emissions from certain biomass sources;

(B) modify Subchapters 1 to resolve issues surrounding the date an application for an air quality operating permit must be submitted to the Department; and

(C) make other nonsubstantive changes in the sections of the rules that are being revised.

EPA has deferred for a period of three (3) years the application of the PSD and Part 70 permitting requirements to biogenic CO_2 emissions from bioenergy and other biogenic stationary sources. The proposed modification of the definition of "carbon dioxide equivalent emissions" or "CO_2e" in OAC 252:100-1-3, along with previous revisions of the definitions of "subject to regulation" in 252:100-8-2 and 252:100-8-31, will accomplish this deferral. Due to an error in the *Oklahoma Register* (28 OK Reg 1079) published June 15, 2011, the Department is proposing to correct the definition of CO_2e by replacing a dash that was erroneously converted to the letter "B". The Department proposes to add a definition of "fossil fuel" for further clarity in the CO_2 deferral. These proposed modifications to Subchapter 1 will ensure that the State rules regarding greenhouse gas permitting will not be perceived to be more stringent than the corresponding federal rules. The Department also proposes to change "PM-10" to "PM_{10}" and "PM-2.5" to "$PM_{2.5}$" in some definitions in 252:100-1-3 for consistency in formatting.

The Department is proposing changes to clarify the date an application for an air quality operating permit must be submitted. The Department proposes

to define the term "commencement of operation" or "commencing operation" in OAC 252:100-1-3 and use that term in 252:100-7-18(a)(1) and (2).

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:100-1-3. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise or unless defined specifically for a Subchapter, section, or subsection in the Subchapter, section, or subsection.

"Act" means the Federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq.

"Administrator" means, unless specifically defined otherwise, the Administrator of the United States Environmental Protection Agency (EPA) or the Administrator's designee.

"Air contaminant source" means any and all sources of emission of air contaminants (pollutants), whether privately or publicly owned or operated, or person contributing to emission of air contaminants. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, heating and power plants or stations, buildings and other structures of all types.

"Air pollution abatement operation" means any operation which has as its essential purpose a significant reduction in:

(A) the emission of air contaminants, or

(B) the effect of such emission.

"Air pollution episode" means high levels of air pollution existing for an extended period (24 hours or more) of time which may cause acute harmful health effects during periods of atmospheric stagnation, without vertical or horizontal ventilation. This occurs when there is a high pressure air mass over an area, a low wind speed and there is a temperature inversion. Other factors such as humidity may also affect the episode conditions.

"Ambient air standards" or **"Ambient air quality standards"** means levels of air quality as codified in OAC 252:100-3.

"Atmosphere" means the air that envelops or surrounds the earth.

"Best available control technology" or **"BACT"** means the best control technology that is currently available as determined by the Division Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs of alternative control systems.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.

"Carbon dioxide equivalent emissions" or **"CO_2e"** means an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions, for each of the six greenhouse gases in the pollutant GHG, by the gas' associated global warming potential (GWP) published in Table A-1 to subpart A of 40 CFR Part 98 ~~B~~ Global Warming Potentials, and summing the resultant value for each to compute a CO_2e. For purposes of the definitions of "subject to regulation" in OAC 252:100-8-2 and 252:100-8-31, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

"Catalytic cracking unit" means a unit composed of a reactor, regenerator and fractionating towers which is used to convert certain petroleum fractions into more valuable products by passing the material through or commingled with a bed of catalyst in the reactor. Coke deposits produced on the catalyst during cracking are removed by burning off in the regenerator.

"Combustible materials" means any substance which will readily burn and shall include those substances which, although generally considered incombustible, are or may be included in the mass of the material burned or to be burned.

"Commence" means, unless specifically defined otherwise, that the owner or operator of a facility to which neither a NSPS or NESHAP applies has begun the construction or installation of the emitting units on a pad or in the final location at the facility.

"Commencement of operation" or **"commencing operation"** means the owner or operator of the stationary source has begun, or caused to begin, emitting a regulated air pollutant from any activity for which the stationary source is designed and/or permitted.

"Complete" means in reference to an application for a permit, the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Director from requesting or accepting any additional information.

"Construction" means, unless specifically defined otherwise, fabrication, erection, or installation of a source.

"Crude oil" means a naturally occurring hydrocarbon mixture which is a liquid at standard conditions. It may contain sulfur, nitrogen and/or oxygen derivatives of hydrocarbon.

"Direct fired" means that the hot gasses produced by the flame or heat source come into direct contact with the material being processed or heated.

"Division" means Air Quality Division, Oklahoma State Department of Environmental Quality.

"Dust" means solid particulate matter released into or carried in the air by natural forces, by any fuel-burning, combustion, process equipment or device, construction work, mechanical or industrial processes.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable limiting Subchapter, permit, or order of the DEQ. This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

"Existing source" means, unless specifically defined otherwise, an air contaminant source which is in being on the effective date of the appropriate Subchapter, section, or paragraph of these rules.

"Facility" means all of the pollutant-emitting activities that meet all the following conditions:

(A) Are under common control.

(B) Are located on one or more contiguous or adjacent properties.

(C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the State implementation plan and expressly requires adherence to any permit issued under such program.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fuel-burning equipment" means any one or more of boilers, furnaces, gas turbines or other combustion devices and all appurtenances thereto used to convert fuel or waste to usable heat or power.

"Fugitive dust" means solid airborne particulate matter emitted from any source other than a stack or chimney.

"Fugitive emissions" means, unless specifically defined otherwise, those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Fume" means minute solid particles generated by the condensation of vapors to solid matter after volatilization from the molten state, or generated by sublimation, distillation, calcination, or chemical reaction when these processes create airborne particles.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food.

"Greenhouse gas" or **"GHG"** means the air pollutant defined in 40 CFR § 86.1818-12(a) as the aggregate group of six greenhouse gases: carbon dioxide (CO_2), nitrous oxide (N_2O), methane (CH_4), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

"Gross particulate matter" or **"GPM"** means particulate matter with an aerodynamic diameter greater than 10 micrometers.

"In being" means as used in the definitions of New Installation and Existing Source that an owner or operator has undertaken a continuous program of construction or modification or the owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction or modification prior to the compliance date for installation as specified by the applicable regulation.

"Incinerator" means a combustion device specifically designed for the destruction, by high temperature burning, of solid, semi-solid, liquid, or gaseous combustible wastes and from which the solid residues contain little or no combustible material.

"Indirect fired" means that the hot gasses produced by the flame or heat source do not come into direct contact with the material, excluding air, being processed or heated.

"Installation" means an identifiable piece of process equipment.

"Lowest achievable emissions rate" or **"LAER"** means, for any source, the more stringent rate of emissions based on paragraphs (A) and (B) of this definition. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of LAER allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable standard of performance for the new source.

(A) LAER means the most stringent emissions limitation which is contained in the implementation plan of any State for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable, or

(B) LAER means the most stringent emissions limitation which is achieved in practice by such class or category of stationary sources.

"Major source" means any new or modified stationary source which directly emits or has the capability at maximum design capacity and, if appropriately permitted, authority to emit 100 tons per year or more of a given pollutant. (OAC 252:100-8, Part 3)

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or

usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Mist" means a suspension of any finely divided liquid in any gas or atmosphere excepting uncombined water.

"Modification" means any physical change in, or change in the method of operation of, a source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted, except that:

(A) routine maintenance, repair and replacement shall not be considered physical changes; and,

(B) the following shall not be considered a change in the method of operation:

(i) any increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) an increase in hours of operation;

(iii) use of alternative fuel or raw material if, prior to the date any standard under this part becomes applicable to such source the affected facility is designed to accommodate such alternative use.

"National Emission Standards for Hazardous Air Pollutants" or **"NESHAP"** means those standards found in 40 CFR Parts 61 and 63.

"New installation", "New source", or **"New equipment"** means an air contaminant source which is not in being on the effective date of these regulations and any existing source which is modified, replaced, or reconstructed after the effective date of the regulations such that the amount of air contaminant emissions is increased.

"New Source Performance Standards" or **"NSPS"** means those standards found in 40 CFR Part 60.

"Nonmethane organic compounds" or **"NMOC"** means nonmethane organic compounds, as defined in 40 CFR 60.754.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Open burning" means the burning of combustible materials in such a manner that the products of combustion are emitted directly to the outside atmosphere.

"Organic compound" means any chemical compound containing the element carbon.

"Owner or operator" means any person who owns, leases, operates, controls or supervises a source.

"Part 70 permit" means (unless the context suggests otherwise) any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to this Chapter.

"Part 70 program" means a program approved by the Administrator under 40 CFR Part 70.

"Part 70 source" means any source subject to the permitting requirements of Part 5 of Subchapter 8, as provided in OAC 252:100-8-3(a) and (b).

"~~PM-10~~ $\underline{PM_{10}}$ emissions" means particulate matter emitted to the ambient air with an aerodynamic diameter of 10 micrometers or less as measured by applicable reference methods, or an equivalent or alternative method.

"~~PM-10~~ $\underline{PM_{10}}$" means particulate matter with an aerodynamic diameter of 10 micrometers or less.

"~~PM-2.5~~ $\underline{PM_{2.5}}$" means particulate matter with an aerodynamic diameter of 2.5 micrometers or less.

"Particulate matter" or **"PM"** means any material that exists in a finely divided form as a liquid or a solid.

"Particulate matter emissions" means particulate matter emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method.

"Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

"Prevention of significant deterioration" or **"PSD"** means increments for the protection of attainment areas as codified in OAC 252:100-3.

"Process equipment" means any equipment, device or contrivance for changing any materials or for storage or handling of any materials, the use or existence of which may cause any discharge of air contaminants into the open air, but not including that equipment specifically defined as fuel-burning equipment, or refuse-burning equipment.

"Process weight" means the weight of all materials introduced in a source operation, including solid fuels, but excluding liquids and gases used solely as fuels, and excluding air introduced for the purposes of combustion. Process weight rate means a rate established as follows:

(A) for continuous or long-run, steady-state, operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.

(B) for cyclical or batch source operations, the total process weight for a period which covers a complete or an integral number of cycles, divided by the hours of actual process operation during such period.

(C) where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, that interpretation which results in the minimum value for allowable emission shall apply.

"Reasonably available control technology" or **"RACT"** means devices, systems, process modifications, or other apparatus or techniques that are reasonably available taking into account:

(A) The necessity of imposing such controls in order to attain and maintain a national ambient air quality standard;

(B) The social, environmental, and economic impact of such controls; and

(C) Alternative means of providing for attainment and maintenance of such standard.

"Reconstruction" means

(A) the replacement of components of an existing source to the extent that will be determined by the Executive Director based on:

(i) the fixed capital cost (the capital needed to provide all the depreciable components of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new source);

(ii) the estimated life of the source after the replacements is comparable to the life of an entirely new source; and,

(iii) the extent to which the components being replaced cause or contribute to the emissions from the source.

(B) a reconstructed source will be treated as a new source for purposes of OAC 252:100-8, Part 9.

"Refinery" means any facility engaged in producing gasoline, kerosene, fuel oils or other products through distillation of crude oil or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

"Refuse" means, unless specifically defined otherwise, the inclusive term for solid, liquid or gaseous waste products which are composed wholly or partly of such materials as garbage, sweepings, cleanings, trash, rubbish, litter, industrial, commercial and domestic solid, liquid or gaseous waste; trees or shrubs; tree or shrub trimmings; grass clippings; brick, plaster, lumber or other waste resulting from the demolition, alteration or construction of buildings or structures; accumulated waste material, cans, containers, tires, junk or other such substances.

"Refuse-burning equipment" means any equipment, device, or contrivance, and all appurtenances thereto, used for the destruction of combustible refuse or other combustible wastes by burning.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the DEQ;

(B) For the partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For purposes of this Chapter, a principal executive officer or installation commander of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For affected sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under this Chapter.

"Shutdown" means the cessation of operation of any process, process equipment, or air pollution control equipment.

"Smoke" means small gas-borne or air-borne particles resulting from combustion operations and consisting of carbon, ash, and other matter any or all of which is present in sufficient quantity to be observable.

"Source operation" means the last operation preceding the emission of an air contaminant, which operation:

(A) results in the separation of the air contaminant from the process materials or in the conversion of the process materials into air contaminants, as in the case of combustion of fuel; and,

(B) is not an air pollution abatement operation.

"Stack" means, unless specifically defined otherwise, any chimney, flue, duct, conduit, exhaust, pipe, vent or opening, excluding flares, designed or specifically intended to conduct emissions to the atmosphere.

"Standard conditions" means a gas temperature of 68 degrees Fahrenheit (20° Centigrade) and a gas pressure of 14.7 pounds per square inch absolute.

"Startup" means the setting into operation of any process, process equipment, or air pollution control equipment.

"Stationary source" means, unless specifically defined otherwise, any building, structure, facility, or installation either fixed or portable, whose design and intended use is at a fixed location and emits or may emit an air pollutant subject to OAC 252:100.

"Total Suspended Particulates" or **"TSP"** means particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50.

"Temperature inversion" means a phenomenon in which the temperature in a layer of air increases with height and the cool heavy air below is trapped by the warmer air above and cannot rise.

"Visible emission" means any air contaminant, vapor or gas stream which contains or may contain an air contaminant which is passed into the atmosphere and which is perceptible to the human eye.

"Volatile organic compound" or **"VOC"** means any organic compound that participates in atmospheric photochemical reactions resulting in the formation of tropospheric ozone. Carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, ammonium carbonates, tert-butyl acetate and compounds listed in 40 CFR 51.100(s)(1) are presumed to have negligible photochemical reactivity and are not considered to be VOC.

[OAR Docket #12-650; filed 5-21-12]

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

[OAR Docket #12-651]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Permits for Minor Facilities
Part 3. Construction Permits
252:100-7-15. [AMENDED]
Part 4. Operating Permits
252:100-7-18. [AMENDED]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, Air Quality Advisory Council, 27A O.S. §§ 2-2-201 and 2-5-107, and Oklahoma Clean Air Act, 27A O.S.§§ 2-5-101 *et seq.*
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ANALYSIS:
The Department is proposing to:
(A) modify Subchapter7 to resolve issues surrounding the date an application for an air quality operating permit must be submitted to the Department;
(B) modify Subchapter 7 to achieve consistency between new sources and modifications regarding the requirement for air quality permits for facilities subject to federal New Source Performance Standards (NSPS, 40 CFR Part 60) and/or federal National Emission Standards for Hazardous Air Pollutants (NESHAPs, 40 CFR Parts 61 and 63); and
(C) make other nonsubstantive changes in the sections of the rule that are being revised.
The Department is proposing to revise OAC 252:100-7-15(a)(2)(B)(I) to narrow the requirement for an existing minor facility to obtain an individual air quality construction permit. The proposed revision would require an existing minor facility to obtain a construction permit to add a piece of equipment or a process that is subject to an emission standard, equipment standard, or work practice standard in an NSPS or NESHAP. A construction permit would not be required to add a process or equipment that is subject only to reporting and/or recordkeeping requirements in an applicable NSPS and/or NESHAP.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

PART 3. CONSTRUCTION PERMITS

252:100-7-15. Construction permit

(a) **Construction permit required.** A construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add a piece of equipment or a process that is subject to ~~NSPS or NESHAP~~ an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in an increase in actual emissions of any one regulated air pollutant by more than 5 TPY.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 TPY of each regulated air pollutant, except for HAPs.

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

(3) **Individual permit.** The owners or operators of minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.

(c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).

(1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to:

(A) site information,

(B) process description,

(C) emission data,

(D) BACT when required,

(E) sampling point data and

(F) modeling data when required.

(2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.

(d) **Permit contents.** The construction permit:

(1) Shall require the permittee to comply with all applicable air pollution rules.

(2) Shall prohibit the exceedance of ambient air quality standards contained in OAC 252:100-3.

(3) May establish permit conditions and limitations as necessary to assure compliance with all rules.

(e) **Failure to comply with a construction permit.** A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.

(f) **Cancellation of authority to construct or modify.** A duly issued permit to construct or modify will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

PART 4. OPERATING PERMITS

252:100-7-18. Operating permit

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new minor facility for more than a ~~60-day~~ 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than a ~~60-day~~180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(b) **Administrative permit amendment.** An administrative permit amendment to an operating permit does not require a prior construction permit. Except for correction of typographical errors, application for an administrative permit

amendment shall be made to the DEQ in writing within 30 days of the date the change occurred. Application for correction of typographical errors can be made at anytime. An administrative permit amendment can be made to:

(1) correct typographical errors;

(2) identify a change in name, address, or phone number of any person identified in the permit, or provide a similar minor administrative change at the facility;

(3) require more frequent monitoring or reporting by the permittee; and/or

(4) allow other permit amendments that are not physical or operational changes and that do not result in an increase in emissions.

(c) **Denial or revocation of a permit to operate.** No owner or operator shall cause or authorize the operation of a minor facility if the DEQ denies or revokes a permit to operate.

(d) **Permit Categories.** Three types of operating permits are available. See OAC 252:100-7-15(b) for a complete description of the permit categories.

(e) **Permit application requirements.** An operating permit application shall meet the following requirements.

(1) **New or modified facility.** An operating permit application must contain the following information.

(A) **Application content.** Application shall be made on a form provided by the DEQ. An application shall contain:

(i) The proposed operation start-up date, or phased dates when applicable.

(ii) Revisions to the installation/construction, if any, that differed from the construction design and plan given in the permit application material, data and specifications.

(B) **Emission tests.** Before a permit to operate a new or modified minor facility is granted, the applicant, if required by the DEQ, shall conduct emission tests in accordance with methods approved by the DEQ with the tests being made at the expense of the applicant. The DEQ shall be given advance notice of the tests, may monitor performance tests conducted by the applicant, and may also conduct emissions tests. The results of any required test must be provided to the DEQ along with supporting information as required.

(2) **Contents of an application for an administrative permit amendment.** The application may be made on the DEQ application form or it may be in letter form. The application shall:

(A) describe the change to be made to the permit,

(B) include the date the change occurred,

(C) identify the facility and source involved, and

(D) be signed by the applicant.

(f) **Operating permit conditions.**

(1) Emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

[OAR Docket #12-651; filed 5-21-12]

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

[OAR Docket #12-653]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 31. Control of Emission of Sulfur Compounds
Part 1. General Provisions
252:100-31-1. [AMENDED]
252:100-31-2. [AMENDED]
252:100-31-4. [NEW]
Part 2. Ambient Air Concentration Limits or Impacts for New and Existing Equipment, Sources, or Facilities
252:100-31-7. [AMENDED]
Part 3. Existing Equipment Standards
252:100-31-13. [AMENDED]
252:100-31-15. [AMENDED]
252:100-31-16. [AMENDED]
Part 5. New Equipment Standards
252:100-31-25. [AMENDED]
252:100-31-26. [AMENDED]
252:100-31-27. [REVOKED]

AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, Air Quality Advisory Council, 27A O.S. §§ 2-2-201 and 2-5-107, and Oklahoma Clean Air Act, 27A O.S.§§ 2-5-101 *et seq.*

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ANALYSIS:
The Department is proposing changes to Subchapter 31, Control of Emission of Sulfur Compounds, to clarify the language and to bring the allowable sulfur dioxide (SO_2) ambient air limits set forth in OAC 252:100-31-7(a) into line with the requirements of the recently-enacted change

to the SO_2 National Ambient Air Quality Standards (NAAQS). In response to previous public and Council comments, the Department is proposing additional changes to several longstanding control, monitoring, and emission requirements of the Subchapter. In addition, the Department is proposing to add requirements for fuel-burning equipment that uses an alternative fuel. The Department is also proposing to add a new section 252:100-31-4, which aligns Subchapter 31 excess emission reporting requirements with those of 252:100-9 for facilities that are also covered by a 40 CFR Part 60 emission limit.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4100

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 31. CONTROL OF EMISSION OF SULFUR COMPOUNDS

PART 1. GENERAL PROVISIONS

252:100-31-1. Purpose

The purpose of this ~~Subchapter~~subchapter is to control emissions of sulfur compounds from stationary sources~~ in order to prevent the Oklahoma Air Quality Standard from being exceeded and insure that degradation of the present level of air quality in Oklahoma does not occur~~.

252:100-31-2. Definitions

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

"Alternative fuel" means fuel derived from any source other than petroleum, natural gas, or coal. Alternative fuel includes, but is not limited to, biogas, waste-derived fuel, recycled tires, tire-derived fuel, and wood fuel as defined in OAC 252:100-19-1.

"Black liquor solids" means the dry weight of the solids~~, which~~that enter the recovery furnace in the black liquor.

"Digester system" means each continuous digester or each batch digester used for the cooking of wood in white liquor, and associated flash tank(s), ~~below~~ blow tank(s), chip steamer(s), and condenser(s).

~~**"Existing facility," "existing source,"** or **"existing equipment"** means any facility, source, or equipment that emits sulfur compounds and which is in being prior to July 1, 1972, except that for facilities, sources, or equipment subject to:~~

~~(A) OAC 252:100-31-7(b) and/or OAC 252:100-31-26(a)(1), the date is prior to December 31, 1974, and~~

~~(B) OAC 252:100-31-13, the date is on or before August 17 1971.~~

"Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

"Kraft pulp mill" means any pulp mill process facility that produces pulp from wood by cooking (digesting) wood chips in a water solution of sodium hydroxide and sodium sulfide (white liquor) at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.

"Lime kiln" means a unit used to calcine lime mud, which consists primarily of calcium carbonate, into quickline, which is calcium oxide.

"Multiple-effect evaporator system" means the multiple-effect evaporators and associated condenser(s) and hotwell(s) used to concentrate the spent cooking liquid that is separated from the pulp (black liquor).

~~**"New facility," "new installation," "new source,"** or **"newequipment"** means any facility, installation, source, or equipment that emits sulfur compounds and which is not in being on, or which is modified after, July 1, 1972, except that for :~~

~~(A) facilities, installations, sources, or equipment subject to OAC 252:100-31-7(b) and/or OAC 252:100-31-26(a)(1) the date is December 31, 1974;~~

~~(B) petroleum refining facilities, sources, or equipment subject to OAC 252:100-31-26 (a)(2), the date is December 31, 1974; and~~

~~(C) facilities, sources or equipment subject to OAC 252:100-31-13, the date is August 17, 1971.~~

"Petroleum and natural gas process equipment" means ~~processes~~ the process equipment used ~~in the processing of~~ to convert crude petroleum and/or natural gas into refined products~~ including~~. Petroleum and natural gas process equipment includes, but is not limited to, distillation columns, treating columns, catalytic cracking units, catalytic reforming units, sulfur removal equipment, petroleum coke units, flares, heat exchangers, reboilers, jet ejectors, compressors, recompressors, and any other auxiliary equipment pertinent to the process.

"Petroleum and natural gas process facility" means a facility that is engaged in converting crude petroleum and/or natural gas into refined products. Petroleum and natural gas process facilities include petroleum refineries and natural gas processing plants (as defined in 40 CFR § 60.631), but do not include petroleum and natural gas production, gathering, and transportation facilities.

~~**"Pulp mill"** means the process equipment used in production of pulp from wood chips or bolts which may include but are not limited to, debarker, chipper, digester, blow tank, washers, condensers, evaporators, recovery furnace, lime kiln, smelt dissolving tank, mixers, heat exchangers, gas scrubbers, and other auxiliaries pertinent to the process.~~

"Recovery furnace" means either a straight ~~kraft recovery~~ kraft-recovery furnace or a ~~cross recovery~~ cross-recovery furnace, and includes the direct-contact evaporator for a ~~direct contact~~ direct-contact furnace.

"~~Smelt dissolving~~ Smelt-dissolving tank" means a vessel used for dissolving the smelt collected from the recovery furnace.

"Sulfur recovery ~~plant~~ unit" means a process device that recovers elemental sulfur from acid gas.

"Sweetening ~~plant~~ unit" means a ~~process~~ natural gas processing device that ~~separates the~~ removes hydrogen sulfide ~~H_2S~~ and carbon dioxide ~~CO_2 contents~~ from the gas stream.

~~**"Three-hour average"** or **"3-hour average"** means the arithmetic average of sampling results or continuous emission monitoring data from three contiguous one-hour periods.~~

"Total reduced sulfur" or **"TRS"** ~~is~~ means the sum of the compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide.

252:100-31-4. Excess emission reporting and alternative reporting schedule

Any excess emission resulting from a violation of any emission limit contained in this subchapter shall be reported in accordance with the requirements of OAC 252:100-9. In the event that the excess emission is also a violation of an applicable 40 CFR Part 60 emission limit, the owner or operator may report the excess emission as part of an alternative reporting schedule applied for or obtained under OAC 252:100-9-7(d), if the following requirements are met.

(1) The excess emission occurs at the same emission unit at the same time.

(2) The emission limit is for the same regulated air pollutant, and has the same averaging time and units of measure as the applicable 40 CFR Part 60 emission limit.

PART 2. AMBIENT AIR CONCENTRATION LIMITS OR IMPACTS FOR NEW AND EXISTING EQUIPMENT, SOURCES, OR FACILITIES

252:100-31-7. ~~Ambient air concentration limits or impacts~~Allowable hydrogen sulfide (H_2S) ambient air concentrations for new and existing sources

(a) [Reserved]~~**Sulfur oxides.** Emissions of sulfur dioxide from any existing facility or any new petroleum and natural gas process facility with equipment subject to OAC 252:100-31-26(a)(1) shall not impact existing ambient air concentrations of sulfur dioxide by more than:~~

~~(1) 1300 µg/m³ (0.50 ppm) in a five (5) minute period of any hour;~~

~~(2) 1200 µg/m³ (0.46 ppm), one-hour average;~~

~~(3) 650 µg/m³ (0.25 ppm), 3-hour average;~~

~~(4) 130 µg/m³ (0.05 ppm), 24-hour average; or,~~

~~(5) 80 µg/m³ (0.03 ppm), annual arithmetic mean.~~

(b) **Hydrogen sulfide.** Emissions of ~~hydrogen sulfide~~ H_2S from any ~~new or existing source~~ facility shall not ~~result in a 24-hour average~~ cause an ambient air concentration of ~~hydrogen sulfide at any given point of~~ H_2S greater than 0.2 ppm ~~or greater~~ at standard conditions, 24-hour average.

(c) **Exceptions.** The standards set in ~~subsections (a) and (b) of~~ this ~~Section~~ section shall not apply to ambient air concentrations or impacts occurring on the property from which such emission occurs, providing such property, from the emission point to the point of any such concentration, is controlled by the person responsible for such emission.

(d) **Compliance assurance.** Upon approval of the Director, facility operators may use appropriate material balances, performance test data, and/or emission factors to determine stack emissions combined, when necessary, with the appropriate ~~EPA-approved~~ EPA-approved atmospheric dispersion models to determine ambient air concentration or impact in lieu of ambient air monitoring as proof of compliance with ~~limits~~ the limit set in ~~OAC 252:100-31-7(a) and (b)~~ this section.

PART 3. EXISTING EQUIPMENT STANDARDS

252:100-31-13. Requirements for existing ~~Sulfuric~~ sulfuric acid plants

Any sulfuric acid plant that was in being on or before August 17, 1971 shall comply with the following requirements.

(~~a~~1) **Sulfuric acid mist standard.** ~~After January 10, 1979, emissions~~ Emissions of sulfuric acid mist ~~from any existing sulfuric acid plant~~ shall not exceed 0.5 ~~lb/T~~ pounds per ton of acid produced (250 ~~g/MT~~grams per metric ton). The acid production shall be expressed as 100% sulfuric acid (H_2SO_4).

(~~b~~2) ~~**Continuous emission**~~ **Emission monitoring.** ~~Continuous monitoring of sulfur dioxide is required for existing~~ The owner or operator shall install, calibrate, maintain, and operate a continuous SO_2 emissions monitoring system for any sulfuric acid ~~plants where the~~ plant with a production capacity ~~is~~ greater than 300 tons per day ~~TPD~~ expressed as 100% acid, except where the conversion of sulfuric acid is utilized to prevent emissions of sulfur dioxide or other sulfur compounds.

(~~c~~3) **Installation, calibration, ~~and~~ maintenance, and operation of emission monitoring systems.** Required emission monitoring systems shall be installed, calibrated, maintained, and operated in accordance with 40 CFR Part 60, Appendix B, and 40 CFR Part 51, Appendix P. ~~Appendix P is hereby incorporated by reference.~~

252:100-31-15. Requirements for existing ~~Kraft~~ kraft pulp mills

After May 8, 1989, ~~all existing~~ any kraft pulp ~~mills~~ mill that was in being on or before July 1, 1972 shall comply with ~~meet~~ the following requirements ~~standards~~.

(1) ~~**TRS.** Emissions of~~ TRS emissions from any recovery furnace shall not exceed~~:~~

~~(A)~~ 40 ppm ~~TRS~~, measured ~~a hydrogen sulfide~~ as H_2S on a dry basis and on a 12-hour average, converted to eight percent (8%) by volume oxygen. ~~from any recovery furnace;~~

(2~~B~~) TRS emissions from any lime kiln shall not exceed 40 ppm ~~TRS~~ measured as ~~hydrogen sulfide~~ H_2S on

a dry basis and on a 12-hour average, corrected to ten percent (10%) by volume oxygen. ~~from any lime kiln; and,~~

(3~~C~~) TRS emissions from any smelt-dissolving tank shall not exceed 0.033 ~~lb~~ pounds TRS per ton~~/T black liquor solids as hydrogen sulfide~~ (0.016 g TRS/kg) of black liquor solids, measured as H_2S on ~~hydrogen sulfide) for~~ a 12-hour average ~~from any smelt dissolving tank~~.

(4~~2~~) ~~**Non-condensable gases.**~~ Non-condensable gases from all evaporators and digester systems shall be efficiently incinerated or otherwise treated to limit emissions of TRS ~~measured as hydrogen sulfide~~ to less than five (5) ppmv, measured as H_2S at standard conditions ~~ppm by volume~~ on a dry basis.

252:100-31-16. Requirements for existing fossil ~~Fossil~~ fuel-fired steam generators

Any fossil fuel-fired steam generator unit that was in being on or before July 1, 1972 shall comply with the following requirements.

(~~a~~1) ~~**Continuous emission**~~ **Emission monitoring.** ~~Continuous monitoring of sulfur dioxide~~ The owner or operator shall install, calibrate, maintain, and operate a continuous SO_2 emissions monitoring system for any ~~is required for existing~~ fossil fuel-fired steam generator that ~~generators where the source~~ utilizes an air pollution abatement operation to reduce the ~~sulfur dioxide~~ emissions of sulfur oxides. Continuous monitoring of oxygen or carbon dioxide is required ~~where~~ if it is necessary to convert ~~sulfur dioxide~~ SO_2 monitoring results.

(~~b~~2) **Installation, calibration, ~~and~~ maintenance, and operation of emission monitoring systems.** Required emission monitoring systems shall be installed, calibrated, maintained, and operated in accordance with 40 CFR Part 60, Appendix B, and 40 CFR Part 51, Appendix P.

PART 5. NEW EQUIPMENT STANDARDS

252:100-31-25. Requirements for new ~~Fuel burning~~ fuel-burning equipment

Any fuel-burning equipment that was not in being on or before July 1, 1972 or that is modified after July 1, 1972 shall comply with the following requirements.

(~~a~~1) **Emission limits.** Emissions of SO_2 attributable to the burning of fuel by fuel-burning equipment shall meet the following limits.

(~~1~~A) ~~**Gas-fired fuel-burning equipment**~~**Gaseousfuel.** Emissions of SO_2~~Sulfur oxide emissions (measured as sulfur dioxide)~~ from combustion of natural gas or other gaseous fuel in ~~any new gas-fired~~ fuel-burning equipment shall not exceed 0.2 lb/~~MMBtu~~MMBTU heat input (86 ng/J).

(~~2~~B) ~~**Liquid-fired fuel-burning equipment**~~ **Liquid fuel.** Emissions of SO_2 ~~Sulfur oxide emissions (measured as sulfur dioxide)~~ from combustion of liquid fuel in ~~any new liquid-fired~~ fuel-burning equipment shall not exceed 0.8 lb/~~MMBtu~~MMBTU heat input (340 ng/J).

(~~3~~C) **Solid ~~fuel-burning equipment~~ fuel.** Emissions of SO_2 ~~Sulfur oxide emissions (measured as sulfur dioxide)~~ from combustion of ~~any new~~ solid fuel in fuel-burning equipment shall not exceed 1.2 lb/~~MMBtu~~MMBTU heat input (520 ng/J).

(~~4~~D) **Combination of fuels burned.** When different types of fuels are burned simultaneously in any combination, emissions of SO_2 shall not exceed the applicable ~~standard (in lb/MMBtu) shall be~~ limit determined by proration unless a secondary fuel is used in de minimis quantities (less than five percent (5%) of total ~~Btu~~ BTU heat input annually). ~~Compliance~~ The applicable limit, in lb/MMBTU heat input, shall be determined using the following formula, where X is the percent of total heat input derived from ~~gas~~ gaseous fuel, Y is the percent of total heat input derived from liquid fuel, and Z is the percent of total heat input derived from solid fuel: ~~SO_2 limit = [X(0.2) + Y(0.8) + Z(1.2)]/(X + Y + Z)~~ SO_2 limit = (0.2X + 0.8Y + 1.2Z)/(X + Y + Z).

(~~b~~2) **Averaging time.** The averaging time for the emission limits set in OAC 252:100-31-25(1)~~(a)~~ is three (3) hours unless a solid fuel sampling and analysis method is used to determine emission compliance. In that case the averaging time is 24 hours.

(~~c~~3) ~~**Emission monitoring, fuel monitoring, and recordkeeping**~~ **Additional requirements for sources with heat input of 250 ~~MMBtu~~MMBTU/hr or more.** ~~The requirements contained in this subsection apply to any new~~ Any fuel-burning equipment with ~~a rated~~ design heat input values of 250 ~~MMBtu~~ MMBTU/hr or ~~greater~~ more shall comply with the following requirements.

(~~1~~A) **Emission monitoring.** ~~The instruments in OAC 252:100-31-25(c)(1)(A) and (B)(I) shall be installed, calibrated, maintained, and operated in any new fuel-burning equipment with a rated heat input of 250 MMBtu/hr or greater. These instruments shall be calibrated following performance specifications 2 and 3 of 40 CFR Part 60, Appendix B.~~

(~~A~~i) **Opacity.** A photoelectric or other type smoke detector and recorder shall be used to monitor opacity, except where gaseous fuel is the only fuel burned.

(~~B~~ii) **Sulfur dioxide.**

~~(i) An instrument for continuously monitoring and recording sulfur dioxide~~ The owner or operator shall install, calibrate, maintain, and operate a continuous SO_2 emissions monitoring system ~~shall be used~~, except where:

(I) gaseous fuel containing less than 0.1% by weight sulfur (0.29 gr/scf or approximately 500 ppmv at standard conditions on a dry basis) is the only fuel burned; or

(II ~~ii~~) ~~A~~ a solid or liquid fuel sampling and analysis method ~~may be~~ is used to determine SO_2 emission compliance.

(iii) **Installation, calibration, maintenance, and operation of emission monitoring systems.**

Required emission monitoring systems shall be installed, calibrated, maintained, and operated in accordance with 40 CFR Part 60, Appendix B, and 40 CFR Part 51, Appendix P.

(~~2~~B) **Fuel monitoring.** The sulfur content of solid or liquid fuels as burned shall be determined in accordance with ~~previous~~ methods ~~as~~ previously approved by the Director or in accordance with Method 19 of 40 CFR Part 60, Appendix A.

(~~3~~C) **Recordkeeping.** The owner or operator ~~of any fuel-burning equipment with a rated heat input of 250 MMBtu/hr or greater~~ shall maintain ~~a file~~ records of all measurements required in ~~paragraphs (1)~~ (A) and ~~(2)~~ (B) of this subsection in accordance with the applicable requirements of OAC 252:100-43-7, including compliance status records and excess emissions measurements. ~~These records and measurements shall be retained for at least two (2) years following the date of such measurements, and made available for inspection by the Division or its representatives during normal business hours.~~

(4) **Alternative fuel.** The requirements of this section apply to any fuel-burning equipment that uses an alternative fuel, unless another limit representing BACT or equivalent is specified in the source's permit. Use of an alternative fuel in fuel-burning equipment is allowed, provided its use is authorized under an enforceable permit. Use of an alternative fuel in fuel-burning equipment is subject to any applicable restrictions or prohibitions that may exist in other provisions of state or federal statutes or rules, e.g., OAC 252:100-8-32.1, 252:100-31-7, 252:100-42, and/or 40 CFR Parts 60, 61, and/or 63.

252:100-31-26. Requirements for new ~~Petroleum~~ petroleum and natural gas processes

Any petroleum and natural gas process that was not in being on or before December 31, 1974 or that is modified after December 31, 1974 shall comply with the following requirements.

~~(a)~~ ~~**Standards.**~~

(1) **Hydrogen sulfide standards and alarm systems.**

(A) ~~Hydrogen sulfide~~ H_2S contained in the waste gas stream from any ~~new~~ petroleum or natural gas process equipment shall be ~~removed from the exhaust gas stream or it shall be oxidized to sulfur dioxide. Hydrogen sulfide emissions shall be~~ reduced by 95% ~~of the hydrogen sulfide in the exhaust gas.~~ by removal or by being oxidized to SO_2 prior to being emitted to the ambient air. This requirement shall not apply if a facility's emissions of H_2S do not exceed 0.3 lb/hr, two-hour average.

(B) The owner or operator shall install, maintain, and operate an alarm system that will signal a malfunction for all thermal devices used to control H_2S emissions from petroleum and natural gas processing facilities regulated under this subparagraph.

(2) ~~**Sulfur dioxide standards.**~~ **Oxides of sulfur.** The following requirements apply to any gas sweetening unit or petroleum refinery process equipment with a sulfur content of greater than 0.54 LT/D in the acid gas stream. Alternatively, any gas sweetening unit or petroleum refinery process equipment with an emission rate of 100 lb/hr or less of SO_X expressed as SO_2, two-hour average, shall be considered to be below this threshold.

(A) **Natural gas ~~processing~~ sweetening units.** ~~Sulfur oxide emissions, calculated as sulfur dioxide,~~ The sulfur content of any acid gas stream from any ~~new~~ gas sweetening ~~plant~~ unit shall be reduced by use of a sulfur recovery ~~plant~~ unit prior to release of the ~~exhaust~~ gas to the ~~atmosphere~~ ambient air. The sulfur recovery ~~plant~~ units shall have the ~~sulfur reduction~~ recovery efficiencies required in ~~subparagraphs~~ (C) through (F) of ~~OAC 252:100-31-26(a)(2)~~ this subparagraph.

(B) **Petroleum refinery processing.** Sulfur recovery ~~plants~~ units operating in conjunction with any refinery process shall have the ~~sulfur reduction~~ recovery efficiencies required in ~~paragraphs~~ (C) through (F) of ~~OAC 252:100-31-26(a)(2)~~ this subparagraph.

(C) ~~**Greater**~~**Sulfur content greater than 0. 54 LT/D but less than or equal to 5.0 LT/D.** When the sulfur content of the acid gas stream from a ~~new~~ gas sweetening unit or refinery process is greater than 0.54 LT/D but less than or equal to 5.0 LT/D, the ~~sulfur dioxide emission reduction~~ recovery efficiency of the sulfur recovery ~~plant~~ unit shall be at least 75~~.0~~%.

(D) ~~**Greater**~~ **Sulfur content greater than 5. 0 LT/D but less than or equal to 150.0 LT/D.** When the sulfur content of the acid gas stream from a ~~new~~ gas sweetening unit or refinery process is greater than 5.0 LT/D but less than or equal to 150.0 LT/D, the required ~~sulfur dioxide emission reduction~~ recovery efficiency of the sulfur recovery ~~plant~~ unit shall be calculated using the following formula, where Z is the minimum ~~emission reduction~~ sulfur recovery efficiency required ~~at all times~~ and X is the sulfur feed rate, expressed in LT/D of sulfur and rounded to one decimal place: $Z = 92.34 - (X^{0.00774})$.

(E) ~~**Greater**~~**Sulfur content greater than 150. 0 LT/D but less than or equal to 1500.0 LT/D.** When the sulfur content of the acid gas stream from a ~~new~~ gas sweetening unit or refinery process is greater than 150.0 LT/D but less than or equal to 1500.0 LT/D, the required ~~sulfur dioxide emission reduction~~ recovery efficiency of the sulfur recovery ~~plant~~ unit shall be calculated using the following formula, where Z is the ~~minimum emission reduction~~ sulfur recovery efficiency required ~~at all times~~ and X is the sulfur feed rate, expressed in LT/D of sulfur and rounded to one decimal place: $Z = 88.78 - (X^{0.0156})$.

(F) ~~**Greater**~~**Sulfur content greater than 1500. 0 LT/D.** When the sulfur content of the acid gas stream from a ~~new~~ gas sweetening unit or refinery process is greater than 1500.0 LT/D, ~~a minimum sulfur dioxide reduction~~ the recovery efficiency of the sulfur recovery unit shall be at least 99.5% ~~shall be met~~.

~~(b) Exceptions.~~

~~(1) Hydrogen sulfide. The requirements of OAC 252:100-31-26(a)(1) shall not apply if hydrogen sulfide emissions do not exceed 0.3 lb/hr, two-hour average.~~

~~(2) Sulfur dioxide. The requirements of OAC 252:100-31-26(a)(2) shall not apply to any new petroleum or natural gas process which would emit 100 lb/hr or less of sulfur oxides expressed as sulfur dioxide, two-hour average. The requirements of paragraph (2) of subsection (a) of this Section can be met alternatively by establishing that the sulfur content of the acid gas stream from any gas sweetening plant or refinery process is 0.54 LT/D or less.~~

~~(c) Emission monitoring for hydrogen sulfide. All new thermal devices for petroleum and natural gas processing facilities regulated under OAC 252:100-31-26(a)(1) shall have installed, calibrated, maintained, and operated an alarm system that will signal noncombustion of the gas.~~

252:100-31-27. Pulp mills [REVOKED]

~~(a) **Emission limit.** The emission of sulfur oxides, calculated as sulfur dioxide, from the blow pits, washer vents, storage tanks, digester relief, and recovery furnace of any new pulp mill shall not exceed 18 lb/T (air dried) of pulp produced, two-hour average.~~

~~(b) **Emission monitoring.** All new pulp mills shall install, calibrate, maintain and operate instruments for continuously monitoring and recording emissions of sulfur dioxide from the recovery system gas cleaning equipment and other locations as required by the Director. The instruments installed and used pursuant to this Section shall have a confidence level of at least 95% and be accurate within "20% and shall be calibrated following performance specifications 2 and 3 of 40 CFR Part 60, Appendix B, and following the quality assurance procedures in 40 CFR Part 60, Appendix F.~~

~~(c) **Recordkeeping.** The owner or operator of any new pulp mill subject to provisions of this Section shall maintain files of all measurements required, including compliance status records and excess emissions measurements. These records and measurements shall be retained for at least two years following the date of such measurements and made available for inspection by the Division during normal business hours.~~

[OAR Docket #12-653; filed 5-21-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 110. LEAD-BASED PAINT MANAGEMENT

[OAR Docket #12-735A]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
252:110-1-1. [AMENDED]
252:110-1-2. [AMENDED]
252:110-1-7. [REVOKED]
Subchapter 5. Incorporation by Reference
252:110-5-1. [AMENDED]

AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101, Air Quality Advisory Council, 27A O.S. §2-2-201 and Oklahoma Lead-based Paint Management Act, 27A O.S. §§ 2-12-201.

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
Incorporated standards:
The following Sections of 40 CFR Part 745, as they exist on August 8, 2011, are, unless otherwise specified, incorporated by reference in their entirety:
40 CFR 745.223 except the definitions of "Interim certification", "Business day", and "Training provider"
40 CFR 745.225 with exceptions
40 CFR 745.226 with exceptions
40 CFR 745.227 with exceptions
40 CFR 745.233
40 CFR 745.61
40 CFR 745.63
40 CFR 745.65
40 CFR 745.82
40 CFR 745.83
40 CFR 745.84
40 CFR 745.85
40 CFR 745.86
40 CFR 745.87
40 CFR 745.88
40CFR 745.89
40CFR 745.90
40 CFR 745.91
Incorporating rules:
252:110-5-1
Availability:
The standards are on file at the Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma, 73102, and are available to the public for examination Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m, excluding state holidays.

ANALYSIS:
The Department is proposing to amend OAC 252:110-5-1, Incorporation by reference, to add the federal Lead-based Paint Renovation, Repair, and Painting (RRP) requirements in 40 CFR Part 745. This rule revision is an essential part of the Department's efforts to obtain U.S. Environmental Protection Agency's delegation to administer the federal RRP program in Oklahoma.

The Department is also proposing to revoke OAC 252:110-1-7, Reference to 40 CFR, because it is a duplication of language already included in Subchapter 5, Incorporation by Reference. In addition, the Department is

proposing to amend OAC 252:110-1-1, Purpose, and 252:110-1-2, Basis and authority, to update references to state statutes.

CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:110-1-1. Purpose

The rules in this Chapter implement the Oklahoma Lead-based Paint Management Act, 27A O.S. ~~Supp. 1994~~,§ 2-12-101 *et seq*., as amended.

252:110-1-2. Basis and authority

The rules in this Chapter were promulgated and adopted pursuant to the Oklahoma Environmental Quality Code, 27A O.S.~~ Supp. 1993~~, § 2-1-101 *et seq*., as amended.

252:110-1-7. Reference to 40 CFR [REVOKED]

~~When reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Lead-based Paint Activities Regulations, 40 CFR Part 745, originally published in the Federal Register, Volume 61, Number 169 on August 29, 1996, and as amended and published in the Federal Register, Volume 66, Number 4 on January 5, 2001 and Volume 69, Number 68, on April 8, 2004.~~

~~(1) **Inclusion of CFR citations and definitions.** When a provision of the Code of Federal Regulations is incorporated by reference, all citations contained therein are also incorporated by reference, unless specifically excluded.~~

~~(2) **Inconsistencies or duplications.** In the event that there are inconsistencies or duplications in the requirements of those provisions incorporated by reference in OAC 252:110-5-1 and the regulations in this Chapter, the provisions incorporated by reference shall prevail, except where the regulations in this Chapter are more stringent.~~

SUBCHAPTER 5. INCORPORATION BY REFERENCE

252:110-5-1. Incorporation by reference

The following Sections of 40 CFR Part 745, as they exist on ~~July 1, 2004~~August 8, 2011, are, unless otherwise specified, incorporated by reference in their entirety:

(1) Section 745.223. Definitions, except the definitions of "Interim certification", "Business day" and "Training provider".

(2) Section 745.225. Accreditation of training programs: target housing and child-occupied facilities, except:

(A) Section 745.225(a)(2) which refers to application dates.

(B) Section 745.225(a)(3) which refers to accreditation deadlines.

(C) Section 745.225(b)(3) which refers to accredited training courses.

(D) Section 745.225(c)(14)(iii) which refers to course notification means of submittal.

(E) Section 745.225(e)(5) which refers to training programs offering only refresher training courses.

(F) Section 745.225(f)(1) which refers to timelines for renewal accreditation of training programs.

(G) Section 745.225(f)(2) which refers to renewal accreditation deadlines.

(3) Section 745.226. Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities, except:

(A) Section 745.226(a)(2) which refers to application dates.

(B) Section 745.226(a)(5) which refers to enforcement dates.

(C) Section 745.226(b)(4) which refers to interim certification.

(D) Section 745.226(c)(3) which refers to interim certification.

(E) Section 745.226(d) which refers to certification based on prior training.

(F) Section 745.226(e) which refers to re-certification.

(G) Section 745.226(f) which refers to certification of firms.

(4) Section 745.227. Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities, except:

(A) Section 745.227(a)(1) which refers to performance dates.

(B) Section 745.227(e)(4)(vii) which refers to abatement notification means of submittal.

(5) Section 745.233. Lead-based paint activities requirements.

(6) Section 745.61. Scope and applicability.

(7) Section 745.63. Definitions.

(8) Section 745.65. Lead-based paint hazards.

(9) Section 745.82.Applicability.

(10) Section 745.83.Definitions.

(11) Section 745.84.Information distribution requirements.

(12) Section 745.85.Work practice standards.

(13) Section 745.86.Recordkeeping and reporting requirements.

(14) Section 745.87.Enforcement and inspections.

(15) Section 745.88. Recognized test kits.

(16) Section 745.89.Firm certification.

(17) Section 745.90.Renovator certification and dust sampling technician certification.

(18) Section 745.91. Suspending, revoking, or modifying an individual's or firm's certification.

[OAR Docket #12-735A; filed 5-25-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 110. LEAD-BASED PAINT MANAGEMENT

[OAR Docket #12-735]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Additional Renovation, Repair, and Painting (RRP) Requirements [NEW]
252:110-15-1. [NEW]
252:110-15-2. [NEW]
252:110-15-3. [NEW]
252:110-15-4. [NEW]
252:110-15-5. [NEW]
252:110-15-6. [NEW]
AUTHORITY:
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N/A
ANALYSIS:
The Department is proposing to amend OAC 252:110, Lead-Based Paint Management, to add a new Subchapter 15, Additional Renovation, Repair, and Painting (RRP) Requirements.

The proposed rule would establish state requirements that are consistent with those established by the U.S. Environmental Protection Agency (EPA) in 40 CFR Part 745 and affect contractors who perform renovation, repair, and painting projects in homes, child-care facilities, and schools built before 1978. The proposal would also affect training providers who offer renovation and dust sampling courses. The proposed state rule is no more stringent than the federal rule. This rule revision is essential to the Department's efforts to obtain EPA delegation to administer the federal Lead-Based Paint Renovation Program in Oklahoma.

The proposed rule includes fees for obtaining and renewing firm certifications and obtaining and renewing training provider accreditations. These fees would be assessed after EPA has delegated the Department authority for the program.
CONTACT PERSON:
Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 15. ADDITIONAL RENOVATION, REPAIR, AND PAINTING (RRP) REQUIREMENTS

252:110-15-1. Definitions

In addition to the definitions contained in OAC 252:110-15-2(10) and the Oklahoma Lead-based Paint Management Act, 27A O.S.,§ 2-12-101 *et seq*., the following words and terms, when used in this Chapter shall have the following meaning, unless otherwise indicated.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, 6 years of age or under, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools, and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age 6, such as restrooms and cafeterias. Common areas that children under age 6 only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age 6.

"Minor repair and maintenance activities" are activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 40 CFR § 745.85(a)(3) are used and where the work does not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the

same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"RRP" means Renovation, Repair and Painting.

"Renovation" means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined by 40 CFR § 745.223. The term renovation includes (but is not limited to): the removal, modification or repair of painted surfaces or painted components (e.g., modification of painted doors, surface restoration, window repair, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of building components (e.g., walls, ceilings, plumbing, windows); weatherization projects (e.g., cutting holes in painted surfaces to install blown-in insulation or to gain access to attics, planing thresholds to install weather-stripping); and interim controls that disturb painted surfaces. A renovation performed for the purpose of converting a building, or part of a building, into target housing or a child-occupied facility is a renovation under this subchapter. The term renovation does not include minor repair and maintenance activities.

"Renovation Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a federal, State, Tribal, or local government agency; or a nonprofit organization that performs renovations.

"Renovator" means an individual who either performs or directs workers who perform renovations. A certified renovator is a renovator who has successfully completed a renovator course accredited by the Department.

252:110-15-2. Scope

(a) **Accreditations and Certifications.** OAC 252:110-5-1(15), (16), and (17), and OAC 252:110-15-3 through -6 establish requirements for the accreditation of training programs, and certification of individual renovators and renovation firms.

(b) **Standards.** OAC 252:110-5-1(11), (12), and (13) set minimum standards for the performance of renovation services. Certified renovators shall follow these standards when performing renovation services.

252:110-15-3. Accreditation of training programs

(a) **Application.** An application for approval and recognition shall be made in the same form and manner as an application for accreditation as provided by OAC 252:110, Subchapter 9 with the exception of RRP accreditation fees listed in OAC 252:110-15-6(c).

(b) **Providers accredited by EPA.** Upon EPA delegation approval, a provider accredited by EPA must present credentials to the Department and receive recognition and approval by the Department as an accredited renovation training provider prior to offering or conducting a renovation training course in Oklahoma. Once their current accreditation has expired, training providers must apply for initial accreditation by the Department as provided in OAC 252:110-15-3(a).

(c) **Fees.** Nonrefundable fees are payable at the time an application or other notice associated with a fee is filed with the Department. Training programs previously accredited by EPA will be allowed an initial fee waiver by the Department until expiration of their current accreditation.

(d) **Frequency of renewal.** Training program accreditation must be renewed one (1) year from the date of issuance and every year thereafter.

252:110-15-4. Renovator certification requirements

(a) **Certifications.** Certification is required for all individuals who perform or offer to perform renovation services in target housing and child-occupied facilities. Certification is obtained through the Department accredited training provider.

(b) **Other state or EPA individual certification.** Any individual renovator who holds a current and valid certification issued by EPA or another state must obtain certification from the Department upon expiration of their current certification. Renovators who have not previously been certified must be certified by the Department accredited training course within six (6) months of EPA delegation approval.

(c) **Certification documentation.** Upon initial authorization, a course completion certificate will be issued to the holder by the accredited training facility. Those holding certificates shall carry the certificates as proof of current certification.

(d) **Frequency of renewal.** Renovator certification must be renewed five (5) years from the date of issuance, and every five (5) years thereafter. Certifications not renewed within 30 days will be considered expired.

(e) **Failure to become certified.** No person shall advertise or otherwise present themselves as a certified renovator or perform or offer to perform renovation services in target housing and child-occupied facilities prior to becoming certified as such by the Department.

(f) **Waiting period for reapplication after certification has been revoked.** A renovator whose certification has been revoked must wait one (1) year from the date of revocation to make reapplication for certification.

252:110-15-5. Certification of firms conducting renovation services

(a) **Firm certifications.** Upon EPA delegation approval, firm certification is required for any company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; federal, State, Tribal, or local government agency; or nonprofit organization that offers to perform renovation services.

(b) **Other state or EPA firm certification.** Any renovation firm that holds a current and valid certification issued by EPA or another state must obtain certification from the Department within six (6) months of EPA delegation approval.

(c) **Applications.** Applications for firm certification are available from the Department upon request and will be accepted in approved formats.

(d) **Fees.** Nonrefundable fees are payable at the time an application or other notice associated with a fee is filed with the Department. Firms previously certified by EPA will be allowed

an initial fee waiver by the Department until expiration of their current certification.

(e) **Certification documentation.** Upon firm application approval, a firm certificate will be issued by the Department.

(f) **Records maintenance.** The firm shall maintain all records pursuant to the requirements established in this Chapter.

(g) **Frequency of renewal.** Firm certification must be renewed five (5) years from the date of issuance, and every five (5) years thereafter. Certifications not renewed within 30 days will be considered expired.

(h) **Failure to certify a firm.** No firm shall advertise or otherwise present itself as a certified renovation firm or perform or offer to perform renovation services in target housing and child-occupied facilities prior to becoming certified as such by the Department.

(i) **Waiting period for reapplication after certification has been revoked.** A firm whose certification has been revoked must wait one (1) year from the date of revocation to make reapplication for certification.

252:110-15-6. Fees

(a) **Applicability.** The following fee schedules shall apply to applicants for renovation firm certification and accreditation.

(b) **Renovation firm certification.**

(1) **Exemption.** Employees of the state or a political subdivision thereof are exempt from renovation firm fees under the provisions of 27A O.S. § 2-12-201(D)(3).

(2) **Initial Renovation Firm Certification.** The fee for initial application filing and review shall be $300.

(3) **Renewal Renovation Firm Certification.** The fee for renewal application filing and review shall be $300, every 5 years upon renewal.

(c) **Accreditation fees**

(1) **Initial accreditation.** Facilities that have not been previously accredited shall submit an application pursuant to OAC 252:110, Subchapter 9, accompanied by fees established in the following schedule:

(A) Initial Renovator Course, $140

(B) Initial Dust Sampling Technician Course, $140

(C) Refresher Renovator Course, $100

(D) Refresher Dust Sampling Technician Course, $100

(2) **Re-accreditation.** Facilities shall annually submit an application pursuant to OAC 252:110, Subchapter 9, and shall include the following fees:

(A) Initial Renovator Course, $85

(B) Initial Dust Sampling Technician Course, $85

(C) Refresher Renovator Course, $77.50

(D) Refresher Dust Sampling Technician Course, $77.50

[OAR Docket #12-735; filed 5-25-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #12-652]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
252:515-1-2 [AMENDED]
252:515-1-3 [AMENDED]
Subchapter 3. Permit Provisions and Applications
Part 1. General Provisions
252:515-3-1 [AMENDED]
252:515-3-2 [AMENDED]
252:515-3-6 [AMENDED]
Part 3. Permit Applications and Modifications
252:515-3-39 [AMENDED]
Subchapter 19. Operational Requirements
Part 1. General Provisions
252:515-19-1 [AMENDED]
Part 3. Operational Requirements for All Disposal Facilities
252:515-19-38 [AMENDED]
252:515-19-40 [AMENDED]
Subchapter 21. ~~Waste~~Used Tire Processing, Certification, Permits and Compensation
252:515-21-1 [AMENDED]
252:515-21-2 [AMENDED]
252:515-21-3 [AMENDED]
252:515-21-4 [AMENDED]
252:515-21-5 [AMENDED]
Part 3. ~~Waste~~Used Tire Facilities
252:515-21-32 [AMENDED]
252:515-21-32.1 [AMENDED]
252:515-21-33 [AMENDED]
252:515-21-34 [AMENDED]
252:515-21-35 [AMENDED]
252:515-21-36 [AMENDED]
Part 5. ~~Waste~~Used Tire Transportation
252:515-21-51 [AMENDED]
Part 7. Compensation from the ~~Waste~~Used Tire Recycling Indemnity Fund
252:515-21-71 [AMENDED]
252:515-21-72 [AMENDED]
252:515-21-74 [AMENDED]
252:515-21-75 [AMENDED]
Part 9. Erosion Control, River Bank Stabilization and Other Conservation Projects
252:515-21-91 [AMENDED]
252:515-21-92 [AMENDED]
Part 11. ~~Waste~~Used Tire Baling
252:515-21-111 [AMENDED]
252:515-21-112 [AMENDED]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201, and the Oklahoma Waste Tire Recycling Act, 27A O.S. § 2-11-401, *et seq.*

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The Department is proposing to amend OAC 252:515, Subchapter 21, because of recent statutory changes to the Oklahoma Used Tire Recycling Act, 27A O.S. § 2-11-401 et seq. The changes to Subchapter 21 include changing "waste tire" to "used tire", increasing the percentage requirement for the cleanup of tire dumps, identifying how the Department will allocate funds for tire dump remediation, and making minor changes to the requirements for mobile operations. In addition, the proposed amendments afford eligibility to tires used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter. The Department is also proposing to change all references to "waste tire" to "used tire" throughout all of Chapter 515.
CONTACT PERSON:
Ferrella March, Land Protection Division, Used Tire Recycling Program, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Ferrella.March@deq.ok.gov, phone 405-702-5175, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:515-1-2. Definitions

The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise. Any term not defined in this Chapter shall be defined as set forth in OAC 252:515-1-3.

"Active" means, when used to describe a solid waste disposal facility or a portion thereof (e.g., active MSWLF or active cell), any solid waste disposal facility, or portion thereof, accepting solid waste as of the effective date of this Chapter, regardless of whether such facility has obtained a solid waste permit from ~~the~~DEQ.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities.

"Active portion" means:

(A) that part of a land disposal facility that has or is receiving waste and that has not received either intermediate or final cover; or

(B) solid waste process and storage areas at non-land disposal facilities.

"Airport" means a public-use airport open to the public without prior permission, and without restrictions within the physical capacities of available facilities.

"Applicant" means any person who applies for a new permit or a modification to an existing permit for a solid waste disposal facility identified in OAC 252:515-3-1(a) and (b).

"Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the land disposal facility, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Such areas include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluxion, block sliding, and rock fall.

"ASTM" means the American Society for Testing and Materials.

"Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Buffer zone" means a designated waste-free area within the permit boundary of a disposal facility, to separate waste handling, processing, and/or disposal activities from adjacent areas.

"Citizen collection station" means a designated location that is established or sponsored by a governmental entity and equipped with waste receptacles for exclusive, non-commercial use by individual residents to deposit their own household waste for collection and transportation to a permitted disposal site.

"CLIMOCS" means the following publication of the Oklahoma Climatological Survey: Shafer, Mark A., CLIMOCS: A Climatological Summary of 168 Oklahoma Cooperative Stations, Oklahoma Climatological Survey, February 1993, 184 pp.

"Composite liner" means a system installed at a land disposal facility composed of a recompacted clay liner overlain with a flexible membrane liner.

"C&D landfill" means a construction/demolition landfill.

"Composting facility" means a facility in which material is converted, under thermophilic conditions, to a product with a high humus content for use as a soil amendment or to prevent or remediate pollutants in soil, air, and stormwater run-off.

"Construction/demolition waste" means waste composed of the following:

(A) asbestos-free waste from construction and/or demolition projects that may include such materials as metal, concrete, brick, asphalt, glass, roofing materials, limited amounts of packing materials, sheetrock, or lumber;

(B) wood waste that may include such materials as yard waste, lumber, wood chips, wood shavings, sawdust, plywood, tree limbs, or tree stumps;

(C) yard waste that may include such materials as grass clippings, tree limbs, tree stumps, shrubbery, flowers, or other vegetative matter resulting from land clearing or landscaping operations; or

(D) residential lead-based paint waste.

"Contaminated stormwater" means:

(A) water such as leachate and gas collection condensate, or stormwater that has come into direct contact with solid waste or waste handling and/or treatment areas;

(B) stormwater discharged from areas of a land disposal facility with less than six inches of waste-free, compacted earthen material; or

(C) wastewater resulting from washing vehicles or areas that are or have been in direct contact with solid waste.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Disease vector" means rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the final disposition of waste and shall be taken to include any discharge, deposit, injection, dumping, spilling, leaking, or placing of waste into or on the land or water so that the waste or any constituent thereof may enter the environment, including the air and any surface waters or ground waters.

"Disposal area" means that part of a land disposal facility where waste is disposed.

"Disposal facility" means disposal site as defined at 27A O.S.§ 2-10-103.

"Engineer" means a licensed, professional engineer.

"EPA" means the United States Environmental Protection Agency.

"Existing" means, when used to describe a solid waste disposal facility or portion thereof (e.g. existing MSWLF or existing cell), any solid waste disposal facility, or portion thereof, that had a solid waste permit as of the effective date of this Chapter.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the handling, processing, storage, and/or disposal of solid waste.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Final closure" means a disposal facility has permanently ceased to accept solid waste for disposal and all required closure activities have been completed for the entire facility in accordance with the approved closure plan. Final closure is not synonymous with phased closure.

"Flood" means the general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of a lake, stream, river or other body of surface water, or the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood, One hundred year (100 year)" means a flood that has a one percent or greater chance of occurrence in any given one year period, or of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Flood plain" means the lowland and relatively flat areas adjoining inland waters that are inundated by the 100-year flood.

"Gas condensate" means the liquid generated as a result of gas recovery processes.

"Generator" means, in the context of NHIW, any person, by site, whose act or process produces NHIW, or whose act first causes an NHIW to become subject to regulation.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous waste" means those wastes subject to regulation under OAC 252:205.

"HBV" means hepatitis B virus.

"HIV" means human immunodeficiency virus.

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

"Household hazardous waste" means household waste that is corrosive, toxic, ignitable, or reactive, including, but not limited to: freon-containing appliances or tanks; non-empty propane tanks; oil, antifreeze, and other motor vehicle fluids; gasoline, kerosene, or diesel fuel; liquid paints; solvents; pesticides, herbicides, fungicides, or rodenticides; caustic cleaners; lead-acid batteries; swimming pool chemicals; unused firearm rounds; and acids and bases.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Injection well" means a facility subject to regulation by OAC 252:652, Underground Injection Control.

"Karst terrains" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic features of karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

"Land disposal facility" means a landfill, or any other discrete area of land or land excavation, where solid waste is placed for treatment, processing, and/or disposal. Land disposal facility does not include:

(A) land application where solid waste is placed onto, or incorporated into, the soil as a soil amendment, fertilizer, or other legitimate agricultural purpose;

(B) a surface impoundment that is either permitted by ~~the~~ DEQ's Water Quality Division or is a part of an approved liquid waste management system at a permitted solid waste disposal facility;

(C) a yard waste composting facility;

(D) an injection well; or

(E) a solid waste transfer station.

"Landfill" means a discrete area of land or a land excavation in which solid waste is placed for permanent disposal.

"Large NHIW generator" means any business, by site, that generates over 10,000 tons of NHIW in Oklahoma during a calendar year. This definition does not include facilities that

are permitted to receive and process solid waste generated by others.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. This includes:

(A) fluid collected in a leachate collection system, including its sumps, surface impoundments, tanks, or other similar locations;

(B) fluid collected on top of the bottom liner of a disposal cell that has received solid waste; and

(C) leachate seeps from disposal cells that have received solid waste.

"Liquid waste" means any waste that is determined to contain "free liquids" as defined by the PFLT.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

"Litter fence" means an easily portable fence to be located adjacent to the working face to assist with control of blowing material.

"Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases that will propagate flame in air at 25EC and atmospheric pressure.

"Maximum horizontal acceleration" means the maximum expected horizontal acceleration of lithified earth material, depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"MSWLF" means Municipal Solid Waste Landfill; a publicly or privately owned landfill that is or has received household waste. A MSWLF may also receive other types of non-hazardous solid wastes, such as nonhazardous sludge, NHIW, special waste, and construction/demolition waste.

"Natural disaster" means a natural occurrence or event (such as a tornado, flood, or forest or prairie fire) of such magnitude that the resultant damage and destruction produce quantities of wastes that overtax available solid waste management systems.

"NHIW" means non-hazardous industrial solid waste, as defined at 27A O.S.§ 2-10-103. Examples of NHIW are listed in Appendix F of this Chapter.

"Non-contaminated stormwater" means:

(A) stormwater that has not come into direct contact with solid waste, waste handling and/or treatment areas;

(B) stormwater discharging from areas of a land disposal facility that has at least six inches of waste-free, compacted earthen material; and

(C) wastewater resulting from washing vehicles or areas that have not been in direct contact with solid waste.

"Oklahoma Uniform Environmental Permitting Act" means 27A O.S.§ 2-14-101 *et seq.* and the rules adopted thereunder at OAC 252:4 ("Rules of Practice and Procedure").

"Open burning" means the combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

"Operating record" means all of the collective records of the facility relating to the site. Such records include, but are not limited to: the permit, modifications, and approvals; records concerning waste received; any sampling or analyses performed by the facility; closure, post-closure and corrective action plans; financial assurance records; inspection and compliance evaluation correspondence; reports; and scale tickets and related fee payment documentation.

"Owner/operator" means the person who owns a solid waste disposal facility and/or is responsible for the overall operation of a facility or part of a facility.

"OWRB" means the Oklahoma Water Resources Board.

"Permit boundary" means the outermost edge of the area described by legal description in the owner/operator's permit. The permitted boundary includes the area in the buffer zone.

"PFLT" means Paint Filter Liquids Test, EPA Method 9095.

"Phased closure" means the closing of individual disposal cells at a land disposal facility as they become full. Phased closure is not synonymous with final closure.

"Piezometer" means a small-diameter well used to make groundwater elevation measurements.

"Point source discharge" means any discharge of water that, when leaving the permit boundary of a facility, has been channeled or altered by man's activity in working that site.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a land disposal facility.

"POTW" means Publicly Owned Treatment Works; a wastewater treatment system, as defined at 27A O.S.§ 2-6-101, that is owned by a State or municipality for the treatment of municipal or industrial wastewaters.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"Recharge area" means an area where water is absorbed and added to the zone of saturation.

"Regulated medical waste" means a waste or reusable material that contains an etiologic agent and is generated in

the diagnosis, treatment or immunization of human beings or animals; research pertaining to the diagnosis, treatment or immunization of human beings or animals; or the production or testing of biological products. Such waste includes, but is not limited to:

(A) cultures and stocks of etiologic agents or live vaccines, and culture dishes, devices, paper, and cloth that has come into contact with such cultures, stocks or live vaccines;

(B) human blood, blood products, and human body fluids, except urine or feces;

(C) pathological wastes consisting of human tissues, organs, and body parts removed during surgery, autopsy, biopsy and other medical procedures;

(D) untreated sharps;

(E) used blood collection bags, tubes, and vials;

(F) contaminated carcasses, body parts and bedding of animals intentionally exposed to pathogens in research, in the production of biologicals or the "in vivo" testing of pharmaceuticals;

(G) items contaminated with blood or other human body fluids which drip freely or would release such materials in a liquid or semi-liquid state if compressed or are caked with dried blood or body fluids and are capable of releasing these materials;

(H) isolation wastes unless determined to be non-infectious by the infection control committee at the health care facility;

(I) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV;

(J) all disposable materials that have come in contact with cytotoxic or antineoplastic agents during the preparation, handling, and administration of such agents. Such wastes include, but are not limited to, masks, gloves, gowns, empty IV tubing and bags, vials, and other contaminated materials; and

(K) any other material or equipment which, in the determination of the health care facility staff, infection control committee or other responsible party, presents a significant danger of infection because it is contaminated with, or may reasonably be expected to be contaminated with, etiologic agents.

"Residential lead-based paint waste" means lead-based paint debris, chips, dust, sludges, and other similar wastes generated as a result of abatement, rehabilitation, renovation, or remodeling activities in individual residences.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the uncontrolled, unorganized sorting, collecting, or removing of solid waste at the disposal site.

"Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in two hundred fifty (250) years;

"Sludge" means the definition found at 27A O.S. § 2-10-401.

"Solid waste" means the definition found at 27A O.S.§ 2-10-103.

"Special waste" means those wastes that are not hazardous wastes but because of their nature or volume, require special or additional handling aside from that given to routine household refuse. This includes but is not limited to: sludge, septic tank pumpings, grease trap wastes, dead animals, packing house offal and tankage, waste fats and oils, hatchery wastes, cannery wastes, NHIW, tires, and asbestos wastes.

"Structural components" mean liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of a land disposal facility that is necessary for protection of human health and the environment.

"Surface impoundment" means a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Surface water" means water that stands on the surface of the land in reservoirs, lakes, ponds, sloughs, or swamps, or that flows across the land in rivers, creeks, or streams.

"SW-846" means EPA Publication SW-846, Test Methods for the Evaluation of Solid Waste Physical/Chemical Characteristics.

"Tremie pipe" means a device, usually a small-diameter flexible or rigid pipe, that carries filter pack or bentonite cement from the bottom to the top of a borehole or annular space without forming void spaces. In some cases, a well casing or hollow stem auger can be considered a tremie pipe.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the structural components responsible for preventing releases from a land disposal facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terrains.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used Tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose, but can be beneficially reused as approved by the Department.

"~~Waste~~Used Tire facility" means the definition found at 27A O.S.§ 2-11-402.

"Waste pile" means any non-containerized accumulation of solid, non-flowing waste.

"Waters of the state" means the definition found at 27A O.S.§ 2-6-101.

"Wetlands" mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

"Working face" means the place within a land disposal facility where waste has been deposited and has not been covered with at least intermediate cover.

"Yard waste composting facility" means a composting facility that only accepts yard waste.

"Zone of aeration" means a subsurface zone containing water under a pressure lower than that of the atmosphere, including water held by capillarity; and containing air or gases generally under atmospheric pressure. This zone is bounded above by the land surface and below by the water table; and is synonymous with vadose zone and unsaturated zone.

"Zone of saturation" means a subsurface zone in which essentially all the interstices are filled with water under pressure greater than that of the atmosphere. Although the zone may contain interstices filled with gas or liquids other than water, it is still considered saturated. This zone is separated from the zone of aeration by the water table; and is synonymous with phreatic zone.

252:515-1-3. Terms not defined by Act or rule

Any term not defined in the Oklahoma Solid Waste Management Act, the Oklahoma Waste Used Tire Recycling Act, or in this Chapter shall be defined by:

(1) the Dictionary of Geological Terms, Latest Revised Edition, American Geological Institute;

(2) EPA RCRA Groundwater Monitoring Technical Enforcement Guidance Document;

(3) its generally accepted scientific meaning; or

(4) its standard dictionary meaning.

PART 1. GENERAL PROVISIONS

252:515-3-1. Permit required

(a) **Solid waste disposal facilities.** The following solid waste disposal facilities are subject to the requirements of this Subchapter and require a solid waste permit from ~~the~~ DEQ prior to construction and/or operation:

(1) land disposal facilities;

(2) solid waste processing facilities, including:

(A) transfer stations;

(B) solid waste incinerators receiving waste from off-site sources;

(C) regulated medical waste processing facilities receiving waste from off-site sources, and that are not shared service facilities;

(D) ~~waste~~used tire facilities;

(E) composting facilities, except yard waste composting facilities;

(F) permanently established household hazardous waste collection facilities; and

(G) any other type of facility that processes solid waste;

(3) facilities used for the storage of solid waste for longer than 10 days; and

(4) facilities used for the storage of more than 50 ~~waste~~used tires, except as authorized by 27A O.S.§ 2-11-401.7.

(b) **Sludge.** Solid waste disposal facilities used for the beneficial use, transport, disposal, or storage of sludge that is not subject to the direct jurisdiction of any other environmental regulatory agency of the State of Oklahoma shall obtain a permit in accordance with OAC 252:515-3-41.

252:515-3-2. Permit not required

(a) The following do not require a solid waste permit and are not subject to the requirements of this Subchapter, but may be subject to other DEQ permits or requirements:

(1) rock and dirt fills that receive only uncontaminated rock, dirt, concrete, bricks or solidified asphalt;

(2) disposal sites used by a person for disposal of solid waste from his or her household, provided:

(A) the disposal site is on land owned by that person;

(B) the solid waste does not originate from business or commercial activities; and

(C) such disposal does not violate any local government ordinance or create a nuisance or hazard to public health or the environment;

(3) emergency disposal sites approved by ~~the~~ DEQ when a natural disaster creates a need for additional public solid waste disposal sites in the disaster area;

(4) on-site incinerators meeting the exemption requirements of 27A O.S.§ 2-10-501(K);

(5) on-site regulated medical waste treatment activities by hospitals, clinics, or laboratories, or other similar facilities for treatment of regulated medical wastes generated on-site;

(6) facilities that accept only source-separated recyclable materials for recycling;

(7) persons under a DEQ order to remediate an abandoned or inactive waste site in accordance with 27A O.S.§ 2-10-301(H);

(8) facilities used as:

(A) a citizen collection station;

(B) a collection and processing point for source-separated, non-putrescible, recyclable wastes;

(C) a collection point for parking lot or street sweepings; or

(D) a collection point for wastes collected and received in sealed bags from such activities as periodic cleanup campaigns for cities, rights-of-way, or roadside parks;

(9) projects approved by ~~the~~ DEQ and a local conservation district in accordance with 27A O.S.§ 2-10-301(J).

(b) Yard waste composting facilities that receive only yard waste from off-site sources and
are operated in accordance with a plan approved by ~~the~~ DEQ are not subject to this Subchapter. The plan shall include, at a minimum:

(1) the permit application information identified in OAC 252:515-3-36(a)(1) through (a)(8);

(2) a demonstration of compliance with the location restrictions of Subchapter 5 of this Chapter; and

(3) a demonstration of how the facility will comply with applicable regulations of other state agencies or parts thereof, including the Water Quality Division of ~~the~~ DEQ.

(c) Units of local or county government wishing to use baled ~~waste~~used tires in engineering projects are not subject to this Subchapter but must have a plan meeting the requirements of OAC 252:515-21-111 approved by ~~the~~ DEQ prior to beginning the project.

252:515-3-6. Permit transfer

(a) **Transfer required.** If the ownership of a disposal facility is assumed by a new entity,
the permit must be transferred from the previous owner/operator ("transferor") to the new owner/operator ("transferee").

(b) **Exception.** Changes in corporate ownership from majority stock transfers do not require a permit transfer. However, such changes require notice to ~~the~~ DEQ and submittal of an approved disclosure statement meeting the requirements of OAC 252:515-3-31(g).

(c) **Transfer requirements.** Permits may be transferred from the transferor to the transferee upon the following conditions:

(1) the transferor has submitted a written request to ~~the~~ DEQ for transfer of the permit to the transferee;

(2) the transferee has submitted an approved disclosure statement meeting the requirements of OAC 252:515-3-31(g);

(3) the transferee has, if required, established an approved financial assurance mechanism in an appropriate amount and appropriately funded;

(4) the transferee has agreed in writing to comply with:

(A) all permit conditions;

(B) approved plans and specifications;

(C) the Oklahoma Solid Waste Management Act and/or ~~Waste~~Used Tire Recycling Act, as applicable;

(D) the rules in this Chapter; and

(E) any final orders issued pursuant thereto;

(5) the transferee has complied with OAC 252:515-3-33 (relating to oath required); and

(6) the facility meets the compliance requirements of OAC 252:4-7-15. In lieu of demonstrating substantial compliance, the parties to the transfer may enter into a Consent Order with ~~the~~ DEQ to schedule compliance.

(d) **Transferor responsible.** Until such time as ~~the~~ DEQ approves transfer of the permit
to the transferee, the transferor shall remain responsible for the operation of the facility.

252:515-3-39. Additional information for ~~waste~~used tire facilities

In addition to the requirements of OAC 252:515-3-36, permit applications for ~~waste~~ used tires facilities shall include the following:

(1) the intended development, tire processing equipment specifications, and detailed operational plans for the facility;

(2) how the facility will be visually screened, including the planting of trees and other vegetation;

(3) methods appropriate for the protection of human health and the environment to control on-site populations of rodents, flies, mosquitoes, or other animals or insects capable of transmitting disease to humans;

(4) the use of mosquito monitoring devices to determine the mosquito population, a determination of whether or not control action is warranted, and plans to implement control measures as necessary;

(5) the intended use for the processed tire material, consisting of a detailed statement about the owner/operator's plans to make the processed tire material available and accessible for recycling, reuse or energy recovery;

(6) a description of how the processed tire material will be disposed if the intended use ceases to be a viable option;

(7) a fire protection plan that includes:

(A) how the facility will respond to a fire and with what equipment;

(B) the criteria for calling the fire department;

(C) accessibility to a fire hydrant with sufficient water pressure to meet the facility's fire protection needs;

(D) how to control surface water run-off resulting from fire extinguishing efforts;and

(E) other relevant information;

(8) documentation from the local governmental entity responsible for supplying fire protection for the ~~waste~~used tire facility, approving the facility's fire protection plan;

(9) plans for surface water run-off controls around tire piles and processed tire piles to prevent surface water runoff. Engineering plans shall also address discharge of run-off under an OPDES permit or diversion of collected runoff into a POTW or an evaporation pond;

(10) plans for a storage area that shall not contain more than 250,000 whole tires;

(11) plans to ensure all 77 counties of Oklahoma are serviced at least once each calendar quarter; and

(12) a description of how compliance with the requirements of Parts 3 and 5 of OAC 252:515-21 (relating to ~~waste~~used tire facilities and transportation) will be achieved and maintained.

252:515-19-1. Applicability

(a) **Active land disposal facilities.** Parts 3, 5 and 13 of this Subchapter apply to all active land disposal facilities.

(b) **Active MSWLFs.** Parts 3, 5, and 7 of this Subchapter apply to all active MSWLFs.

(c) **Active solid waste processing facilities.** Parts 3 and 9 of this Subchapter apply to all active solid waste transfer stations and processing facilities, except ~~waste~~used tire facilities, regulated medical waste processing facilities, and solid waste composting facilities.

(1) ~~Waste~~**Used Tire facilities.** ~~Waste~~Used Tire facilities are subject to the requirements of Part 3 of this Subchapter, except OAC 252:515-19-33, as well as Parts 3 and 5 of OAC 252:515-21.

(2) **Regulated medical waste processing facilities.** Regulated medical waste processing facilities are subject to the requirements of Part 3 of this Subchapter as well as Parts 3 and 5 of OAC 252:515-23, as applicable.

(3) **Solid waste composting facilities.** Parts 3 and 11 of this Subchapter apply to all active solid waste composting facilities, including composting facilities at land disposal facilities.

(d) **Borrow areas.** Off-site soil borrow areas of land disposal facilities are only subject to the operational requirements of OAC 252:515-19-32, 35, 36, and 55.

252:515-19-38. Placement of waste

(a) **Waters of the state.** Solid waste shall not be placed or allowed to enter, accidentally or otherwise, waters that communicate with waters of the state located outside the permit boundary.

(b) **Buffer zones.** Unless otherwise specified in this Subsection, all disposal facilities shall be designed and maintained with a waste-free buffer zone at least 50 feet in width between all waste disposal and/or handling areas and adjacent property. The buffer zone shall be contained within the permit boundary described in the permit application.

(1) **Previously disposed waste.** If waste has been previously disposed in an adjacent area, then the fifty foot buffer zone shall not apply in that portion.

(2) **MSWLFs.** MSWLFs incorporating land not permitted for disposal prior to July 1,1994 shall have a waste-free buffer zone of at least 100 feet in width.

(3) **~~Waste~~Used tire facilities.** ~~Waste~~Used tire facilities shall maintain restricted areas in accordance with OAC 252:515-21-32(g).

(4) **Smaller buffer zones authorized.** ~~The~~ DEQ may approve smaller buffer zones for good cause shown.

(c) **Use of buffer zone.** Buffer zones and other restricted areas may be used for the temporary collection and storage of source-separated recyclable materials, if such use is described in an approved recycling plan.

252:515-19-40. Recordkeeping and reporting

(a) **All solid waste disposal facilities.** An operating record shall be maintained near each solid waste disposal facility, containing all records concerning the planning, construction, operation, closing, and post-closure monitoring of the facility. Such records shall be maintained until the post-closure monitoring period is terminated and shall include, but are not necessarily limited to, those records required to be maintained in the operating record and/or submitted to ~~the~~ DEQ by Subchapters 3, 5, 17, 19, 25, and 27 of this Chapter.

(b) **Land disposal facilities.** In addition to the records identified in (a) of this Section, the operating record for all land disposal facilities shall contain those records required to be maintained and/or submitted to ~~the~~ DEQ by Subchapters 7, 9, 11, 13, 15, 29, and 31 of this Chapter.

(c) **Regulated medical waste and ~~waste~~used tire facilities.** In addition to the records identified in (a) of this Section, the operating record for regulated medical waste processing facilities and ~~waste~~used tire facilities shall contain those records required to be maintained and/or submitted to ~~the~~ DEQ by Subchapters 23 and 21, respectively.

SUBCHAPTER 21. ~~WASTE~~USED TIRE PROCESSING, CERTIFICATION, PERMITS AND COMPENSATION

PART 1. GENERAL PROVISIONS

252:515-21-1. Applicability

This Subchapter applies to ~~waste~~used tire facilities, ~~waste~~used tire generators, ~~waste~~ used tire transporters, tire dealers, motor license agents, and persons engaged in the processing or recycling of ~~waste~~used tires.

252:515-21-2. Definitions

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

"Act" means the Oklahoma ~~Waste~~Used Tire Recycling Act, 27A O.S.§ 2-11-401 *et seq.*

"Erosion Control Installer" or **"ECI"** means a person, corporation or other legal entity who has obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District to provide services for erosion control projects.

"OTC" means the Oklahoma Tax Commission.

"Processing" or **"~~waste~~used tire processing"** means the definition found at ~~27A O.S.§2-11-402~~27A O.S.§ 2-11-401.1(16). However, in an erosion control, bank stabilization or other ~~waste~~used tire conservation project, it means the proper installation of ~~waste~~used tires obtained from tire dealers or~~from~~ priority cleanup list sites in the project or structure in accordance with the conditions of the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District.

"Recycling" means, in the context of ~~waste~~used tires:

(A) the incorporation of ~~waste~~used tires into agricultural uses recognized by the Oklahoma Department of Agriculture, Food, and Forestry;

(B) the incorporation of ~~waste~~used tires into civil engineering structures or the creation of new products or saleable by-products from tire materials, with prior approval of such projects by ~~the~~ DEQ;

(C) the use of processed tires for energy or fuel recovery; or

(D) the use of ~~waste~~used tires by permitted facilities in accordance with the Act, these rules and the facility's permit.

"Used tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose but can be beneficially reused as approved by the Department.

252:515-21-3. Priority cleanup list

(a) **Investigation and prioritization.** When ~~the~~ DEQ receives notification of or informationabout the existence of an unauthorized ~~waste~~used tire dump, a dump survey shall be conducted to determine landowner information, cleanup feasibility, and an estimate of the number of tires present. The resulting data shall be used to prioritize tire dumps on the priority cleanup list (PCL).

(b) **Priority listing.** Tire dumps will be placed on the PCL when the landowner was the victim of illegal dumping or ~~the~~ DEQ has exhausted the administrative enforcement process.

(c) **Number authorized for compensation.** The PCL shall include the name and number assigned to each tire dump on the list and the estimated total number of tires contained therein. For each ~~waste~~used tire dump on the PCL, the total number of ~~waste~~used tires authorized for compensation from the fund shall not exceed the number of ~~waste~~used tires identified.

(d) **PCL updates.** For each ~~waste~~used tire dump on the PCL, if the total number of ~~waste~~used tires identified on the PCL is removed from that dump and there are ~~waste~~used tires remaining, ~~the~~ DEQ may update the PCL to reflect the remaining number of ~~waste~~used tires.

252:515-21-4. DEQ assistance in special ~~waste~~used tire collection efforts

(a) **Minimum number of tires.** Tire dealers with three hundred (300) or more ~~waste~~used tires at one physical location may request DEQ assistance in causing collection of the ~~waste~~used tires by a ~~waste~~used tire facility.

(b) **Documentation required.** In requesting such assistance, the dealer must provide the following to ~~the~~ DEQ:

(1) the location of the ~~waste~~used tires;

(2) certification that at least 300 ~~waste~~used tires are at the location; and

(3) documentation that all ~~waste~~used tire facilities have been contacted a minimum of twice, at least 60 days apart, and service has not been received.

252:515-21-5. Special collection efforts

(a) **~~Waste~~Used tire facility selection.** For special collection efforts identified in OAC 252:515-21-4, ~~the~~ DEQ will contact ~~waste~~used tire facilities, tire derived fuel facilities (TDF) and entities that install erosion control projects, [hereinafter referred to as "qualified applicants for collection and transportation", (QACT)] on a rotating basis and identify the location of the ~~waste~~used tires, the number of tires present, and a contact name and phone number.

(b) Timeline for collection. The QACT shall provide ~~the~~ DEQ with documentation to demonstrate whether or not the county in which the tires are located has physically been serviced in that quarter. The QACT shall collect the tires at the location identified and otherwise service that county, as follows:

(1) prior to the end of the quarter, if the county has not been physically serviced during that calendar quarter; or

(2) prior to the end of the next calendar quarter, if the previous quarter's service is current.

(c) **Special pickup.** Upon the request of the Executive Director, ~~the~~ DEQ may notify the QACT to collect certain tires within seven (7) days or report the status of the special pickup back to ~~the~~ DEQ.

(d) **Collection efforts from tire dumps or landfills and community-wide clean up events.** ~~The~~ DEQ may require a QACT to collect from tire dumps or landfills on the PCL or from community-wide clean up events approved by ~~the Department~~DEQ.

(1) ~~The~~ DEQ may assign collection events to a QACT, which shall collect the tires within the time period specified.

(2) The QACT shall certify to DEQ the number of tires cleaned up from the collection event.

PART 3. ~~WASTE~~USED TIRE FACILITIES

252:515-21-32. Facility operation requirements

(a) **General.** ~~Waste~~Used tire facilities are subject to the requirements of Part 3 of OAC 252:515-19, except 19-33.

(b) **Acceptable wastes.** Only ~~waste~~used tires shall be accepted at a ~~waste~~used tire facility.

(c) **Maximum storage.**

(1) **~~Waste~~Used tires.** The number of ~~waste~~used tires stored at any time shall not exceed 250,000 or the maximum number authorized by the permit, whichever is less.

(2) **Processed tires.** The amount of processed tire material stored at any time shall not exceed the amount accumulated from three years of operation or the amount for which financial assurance has been provided, whichever is less.

(d) **Tires awaiting processing.** ~~Waste~~Used tires stored on the ground while awaiting processing shall be placed in orderly piles, as follows:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed seven feet and

(3) side slopes shall not be greater than two horizontal to one vertical slope.

(e) **Processed material storage.** If processed tire material is stored in piles, the piles shall meet the following:

(1) the base shall not exceed 200 feet by 150 feet;

(2) the height of the pile shall not exceed 20 feet; and

(3) stable side slopes shall be maintained.

(f) **Tire dumps.** Annually, at least ~~2%~~ 3% to 6% of the ~~waste~~used tires processed must be collected from tire dumps identified on the PCL or through DEQ approved community-wide clean-up events in the State of Oklahoma. In

addition, at least 50% of the required annual PCL percentage must be from tire dumps.

(g) **Restricted areas.**

(1) **Fire lane.** An unobstructed fire lane at least 50 feet in width shall be maintained around the perimeter of each tire pile and each processed tire material pile located outdoors.

(2) **Buffer zone.** A clean buffer zone of at least 75 feet shall be maintained between tire piles or processed tire materials and adjacent properties.

(h) **Weighing processed materials.** Each load of processed tire material shall be weighed on scales tested and certified in accordance with the requirements of the Oklahoma Department of Agriculture, Food and Forestry.

(1) Each truck and/or trailer shall be weighed full and empty.

(2) Gross and tare weights shall be imprinted on the same weight ticket.

(3) Stored tare weights shall not be used.

(i) **Daily log.** A daily log shall be maintained for each load of ~~waste~~used tires received. The daily log shall accurately reflect:

(1) the name and address of the hauler;

(2) the counted number of tires from each ~~waste~~used tire source;

(3) the name and address of each ~~waste~~used tire source;

(4) the number of tires processed each day; and

(5) the use and destination of each daily outbound load of processed tire material.

252:515-21-32.1. TDF facility operation requirements

If a tire derived fuel facility chooses to collect and transport ~~waste~~used tires to its facility, it must comply with the following operations requirements:

(1) 27A O.S.§ 2-11-401.4 (C)(2)(d);

(2) 252:515-21-32 except subsections (b) and (h);

(3) 252:515-21-35; and

(4) 252:515-21-36.

252:515-21-33. Automotive dismantler/parts recycler tires

(a) **Verified statement required.** The owner/operator of a ~~waste~~used tire facility collecting tires for compensation from automotive dismantlers and parts recyclers must attach to the manifest a verified statement from the automotive dismantler or parts recycler itemizing by month the number of vehicles purchased on or after January 1, 1996, which were:

(1) originally licensed in the state of Oklahoma; and

(2) reported to have been dismantled on the Dismantler's Report filed with the Used Motor Vehicle Commission since the date ~~waste~~used tires were collected from the dismantler/parts recycler's facility.

(b) **Limitation of compensation.** Compensation from the fund shall not be paid for a number of tires processed that is more than five times the number of vehicles reported to have been dismantled on the verified statement required by this Section.

252:515-21-34. Mobile operations

Compensation from the fund shall not be paid for tires processed with portable tire processing equipment unless such equipment is described and approved as part of a stationary ~~waste~~used tire facility permitted in Oklahoma. The mobile unit must process ~~waste~~used tires directly into a truck or moveable container that is transported daily to the stationary ~~waste~~used tire facility or other facility approved by DEQ.

252:515-21-35. Financial assurance

(a) **Required.** ~~Waste~~Used tire facilities shall establish financial assurance in accordance with the requirements of Subchapter 27 of this Chapter.

(b) **Amount.** Unless a lesser amount is approved by ~~the~~ DEQ, financial assurance will be established based upon the cost for removal and disposal, by a third party not affiliated with the owner/operator, of the maximum quantity of ~~waste~~used tires and processed tire material stored on site at any time.

252:515-21-36. Recordkeeping and reporting

(a) **Monthly reports.** No later than the 10th day of each month, each facility shall submit a report to ~~the~~ DEQ that includes the following information for the previous month:

(1) the number of tires received at the facility;

(2) the number of tires that came from DEQ approved community-wide cleanup events;

(3) the number of tires that came from dumps on DEQ's priority cleanup list;

(4) a summary of the destinations and intended uses of outgoing shipments of processed tire materials, including the number of tons of processed tire materials per market category; and

(5) the amount of processed tires provided to entities identified in OAC 252:515-21-71(a)(3) that were not in ready-to-use condition when received by such entities.

(b) **Quarterly reports.** No later than the 10th day following each calendar quarter, each facility shall submit a report to ~~the~~ DEQ that documents statewide collection efforts for the previous quarter.

(c) **Annual reports.** No later than the 10th day of January each year, each facility shall submit a report to ~~the~~ DEQ that its scales have been tested and certified as accurate by the Oklahoma Department of Agriculture, Food and Forestry.

PART 5. ~~WASTE~~USED TIRE TRANSPORTATION

252:515-21-51. ~~Waste~~Used tire manifests

(a) **Manifest required.** Any person who transports more than 10 used or ~~waste~~used tires over Oklahoma roads to or from destinations within the state must have a manifest documenting the proper disposition of the tires. All parties must fully complete and sign the manifest. Designated copies must be given to each ~~waste~~used tire generator, transporter, and receiving facility reflected on the manifest.

(1) **~~Waste~~Used tire ~~compensation~~reimbursement manifest.** A ~~Waste~~Used Tire ~~Compensation~~Reimbursement Manifest must be used for transportation of ~~waste~~used tires to a ~~waste~~used tire facility entitled to receive compensation from the fund. A four-part carbonless paper manifest form, numbered in sequence so that each manifest has a unique identifying number, shall be provided by the ~~waste~~used tire facility.

(2) **~~Waste~~Used tire tracking manifest.** A ~~Waste~~Used Tire Tracking Manifest must be used for transportation of ~~waste~~used tires to any location other than a ~~waste~~used tire facility. A three-part, carbonless paper manifest form, numbered in sequence so that each manifest has a unique identifying number, shall be provided by the ~~waste~~used tire generator or transporter.

(b) Accuracy of manifests and tire weights. Manifests shall be complete and accurate in all details and accompanied by weight tickets from certified scales which show the weight of the load collected and transported or accepted for processing by the QACT.

(c) **Inaccurate, incomplete, or insufficient manifest.** ~~The~~ DEQ may not certify QACTs for tires which are processed if the manifests for those tires areincomplete, unreadable, not dated and signed by all parties, not accompanied by a weight ticket, or in any other respect cannot be relied upon to show that the tires were collected, transported and processed pursuant to the Act.

(d) **Signatory.**

(1) **Generator.** The ~~waste~~used tire manifest shall be signed by the generator of the ~~waste~~used tires, all transporters, and the receiving facility.

(2) **~~Waste~~Used tire dump.** If the tires are from a tire dump, the landowner or authorized representative shall sign the manifest as the generator. If the landowner is unknown or unavailable or resides out of state, ~~the~~ DEQ may authorize another signatory prior to the removal of any ~~waste~~used tires.

(e) **Recordkeeping.** Within 30 days of receipt of the ~~waste~~used tires, a completed copy of the manifest shall be returned to the ~~waste~~used tire generator. Copies of the manifest shall be maintained by the generator, transporter, and receiving facility for a period of five years.

PART 7. COMPENSATION FROM THE ~~WASTE~~USED TIRE INDEMNITY FUND

252:515-21-71. Eligibility requirements

(a) **Eligible ~~waste~~used tires for ~~P~~processing.** The following used tires are eligible for compensation from the Fund:~~Waste tires eligible for compensation include~~ motor vehicle tires pursuant to Section 1-134 of Title 47 of the Oklahoma Statutes for which a fee has been assessed by a tire dealer or motor license agent; tires used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter;

(b) **Tires collected under a state tire program.** Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that can be used, reused or legally modified to be reused for its original intended purpose shall not be a used tire.

(~~b~~c) **Qualified applicants.** The following are eligible to receive compensation from the fund only for the processing or recycling of those ~~waste~~used tires referred to in (a) of this section:

(1) ~~waste~~used tire facilities;

(2) Erosion Control Installers who, as a landowner or on behalf of a landowner, have obtained a permit or other authorization from the United States Army Corps of Engineers or a local Conservation District for the use of ~~waste~~used tires for erosion control, river bank stabilization, or other conservation projects on the property of the landowner; and

(3) tire derived fuel facilities; and

(4) units of local or county governments who have a DEQ approved plan to bale ~~waste~~ used tires for use in engineering projects.

(~~c~~d) **Collection and transportation.** Qualified applicants are eligible to receive compensation from the fund only for the collection and transportation of the ~~waste~~used tires referred to in (a) of this section.

(~~d~~e) **PCL and community-wide cleanup event requirement.** At least ~~2%~~ 3% to 6% of the ~~waste~~used tires for which compensation will be requested must come from tire dumps or landfills identified on the PCL and from community-wide cleanup events in the state of Oklahoma. The QACT shall not receive credit toward the ~~2%~~3% to 6% requirement until the collection efforts are approved by DEQ. In addition, at least 50% of the required annual PCL percentage must be from tire dumps.

(f) **Apportionment.** If the ~~Waste~~Used Tire Recycling Indemnity Fund (Fund) contains insufficient funds in any month to satisfy the eligible reimbursements under the Act, ~~the Department~~DEQ shall apportion the payments among the qualified applicants according to the following formula. Divide the total amount of the Fund available for disbursement by the total authorized reimbursements requested by the qualified applicants. The result is expressed as a percentage. Multiply this percentage by the amount requested and authorized for each qualified applicant, resulting in the apportionment for that qualified applicant.

(f) **Additional Compensation.** DEQ shall allocate any remaining monies in the fund to remediate tire dumps. Costs may be determined by cost estimates or unit costs developed by DEQ. Used tire facilities or TDF facilities that remediate tire dumps assigned by DEQ may request reimbursement from the Used Tire Recycling Indemnity Fund upon completion of the remediation as determined by DEQ.

252:515-21-72. Ineligible for compensation

(a) **Previous compensation.** Any person that has received compensation from the fund for projects identified in Part 9 or 11 of this Subchapter shall not be eligible to receive other

compensation from the fund for collection, transportation or delivery of ~~waste~~used tires in conjunction with the same project.

(b) **Certain ~~waste~~used tires.** The following ~~waste~~used tires are not eligible for compensation from the fund:

(1) waste used tires not installed in the approved project by Erosion Control Installers identified in OAC 252:515-21-71(a)(2);

(2) ~~waste~~used tires processed for TDF facilities identified in OAC 252:515-21-71-(a)(3) but are not in ready-to-use condition when received by such facilities;

(3) ~~waste~~used tires not used in the approved project by units of local or county governments identified in ~~OAC 252:515-21-71(a)(4)~~OAC 252:515-21-71(b)(4);

(4) processed or recycled ~~waste~~used tires listed by the OTC in OAC 710:95-5 as being ineligible for compensation; and

(5) processed or recycled ~~waste~~used tires that originated outside the borders of the State of Oklahoma.

252:515-21-74. Partial compensation for projects identified in Part 9

(a) **Partial completion.** Before completion of the project, an applicant may apply to the DEQ in writing for approval of partial compensation from the fund. The application shall include an estimate of the number of ~~waste~~used tires properly installed at the time the application is submitted.

(b) **Compliance.** ~~The~~ DEQ may authorize partial compensation if the applicant is in compliance with the United States Army Corps of Engineers or local Conservation District permit or authorization and the project is properly installed.

(c) **Pro-rated.** Payment may be authorized in the same ratio that the installed portion has to the entire project.

252:515-21-75. Appeal

Any decision by ~~the~~ DEQ that results in the applicant's ineligibility for compensation may be appealed by the applicant in accordance with OAC 252:4, "Rules of Practice and Procedure."

PART 9. EROSION CONTROL, RIVER BANK STABILIZATION AND OTHER CONSERVATION PROJECTS

252:515-21-91. Permit

Permits or other authorizations for the use of ~~waste~~used tires in erosion control, river bank stabilization or other conservation projects may be obtained from the United States Army Corps of Engineers or a local Conservation District.

252:515-21-92. Eligibility requirements

(a) **Use of proper tires.** Annually, at least ~~2%~~3% to 6% of the ~~waste~~used tires for which compensation will be requested must come from tire dumps identified on the PCL or from community-wide cleanup events in the state of Oklahoma and installed in accordance with this Part and the permit or other authorization from the United States Army Corps of Engineers or a local Conservation District. In addition, at least 50% of the required annual PCL percentage must be from tire dumps.

(b) **~~Waste~~Used tire collection.** The Erosion Control Installer (ECI) shall comply with 27A O.S.§ 2-11-401.4(C)(3)(b).

(c) **Project completion report.** Upon completion of the project, the ECI shall submit a project completion report to ~~the~~ DEQ, certifying the project was completed in accordance with the approved design plans. The report shall include the following:

(1) the name, address and telephone number of the applicant;

(2) the tire dump from which tires came, if any, and DEQ identification number;

(3) identification of the community-wide cleanup event from which tires came, if any;

(4) quantity of tires removed from the tire dump or community-wide cleanup event, by tire type;

(5) name and location of the approved project;

(6) quantity and type of tires delivered to and installed at the project;

(7) a copy of the permit or other authorization issued by the United States Army Corps of Engineers or local Conservation District;

(8) a copy of the planting plan developed in conjunction with and approved by the Division of Forestry of the Oklahoma Department of Agriculture, Food, and Forestry;

(9) verification the landowner agrees to complete the planting plan described in (8) of this Subsection;

(10) documentation to verify compliance with (d) of this Section, if applicable; and

(11) other information required by ~~the~~ DEQ.

(d) **Proper disposal.** The ECI shall dispose of any ~~waste~~used tires not needed for the project at a permitted ~~waste~~used tire processing or other ~~waste~~used tire recycling facility, or a permitted solid ~~waste~~used disposal facility.

(e) **DEQ inspection.** After submittal of the project completion report, ~~the~~ DEQ shall inspect the project and the project file to determine compliance with the Act, the rules in this Subchapter, and project plans.

(f) **Project complete.** If the project is complete, ~~the~~ DEQ shall notify the ECI in writing, with copies to ~~the OTC~~, the Oklahoma Department of Agriculture, Food, and Forestry, and the United States Army Corps of Engineers or local Conservation District, as appropriate.

(g) **Project incomplete.** If any aspect of the project is not complete, ~~the~~ DEQ shall give written notification of the deficiencies to the ECI, who shall respond accordingly. In such cases, partial compensation may be authorized in accordance with OAC 252:515-21-74.

(h) **Recordkeeping.** Records required by this Part shall be maintained by the ECI for a period of five years after completion of the project.

PART 11. ~~WASTE~~USED TIRE BALING

252:515-21-111. Project construction requirements

(a) **Plan required.** Units of local or county government in Oklahoma who will seek reimbursement from the Fund for use of baled ~~waste~~used tires in engineering projects shall have a DEQ approved plan describing the nature of the proposed project. Such plan shall include:

(1) the location at which ~~waste~~used tire baling operations will be performed;

(2) a description of the engineering project for which the baled tires will be used;

(3) the approximate date construction will begin and the estimated time to complete the project;

(4) plans for aesthetic enhancement in accordance with OAC 252:515-3-37;

(5) engineering designs that are signed and stamped or sealed by a professional engineer licensed in the State of Oklahoma;

(6) documentation that the project has been approved by:

(A) the unit of local government for projects sponsored by a local government; or

(B) the Board of Commissioners for the county in which the project will be located for projects sponsored by a unit of county government; and

(7) a description of how compliance with the eligibility requirements of OAC 252:515-21-112 will be achieved.

(b) **DEQ review.** After review, ~~the~~ DEQ may require alterations to the plan prior to construction.

(c) **Initiation of construction.** Construction of the project shall not begin until the plan has been approved by ~~the~~ DEQ.

(d) **Bale storage.** No more than 50 ~~waste~~used tire bales shall be accumulated prior to beginning construction of the project.

(e) **Recordkeeping.** All records related to the project and required by this Section shall be maintained by the governmental entity for a period of at least three years after completion of the project.

252:515-21-112. Eligibility requirements

(a) **Use of proper tires.** Only ~~waste~~used tires obtained from tire dumps identified on the PCL or from community-wide cleanup events in the State of Oklahoma and used in accordance with the approved plans shall be eligible for compensation.

(b) **Project completion report.** Upon completion of the project, the governmental entity shall submit a project completion report signed and stamped or sealed by a professional engineer licensed in the State of Oklahoma, certifying the project was completed in accordance with the approved plans. The report shall include the following:

(1) the name, address and telephone number of the applicant and the certifying engineer;

(2) the tire dump from which tires came, if any, and DEQ identification number;

(3) identification of the community-wide cleanup event from which tires came, if any;

(4) quantity of tires removed from the tire dump or community-wide cleanup event, by tire type;

(5) location of the approved project;

(6) quantity and type of tires delivered to and installed in the project;

(7) documentation to verify compliance with (c) of this Section, if applicable; and

(8) other information required by ~~the~~ DEQ.

(c) **Proper disposal.** Any ~~waste~~used tires or bales not needed for the project shall be disposed at a permitted ~~waste~~used tire processing or other ~~waste~~used tire recycling facility, or a permitted solid waste disposal facility.

(d) **DEQ inspection.** After submittal of the project completion report, ~~the~~ DEQ shall inspect the project and the project file to determine compliance with the Act, the rules in this Subchapter, and project plans.

(e) **Project complete.** If the project is complete, ~~the~~ DEQ shall provide written notification, with copies to the OTC.

(f) **Project incomplete.** If any aspect of the project is not complete, ~~the~~ DEQ shall give written notification of the deficiencies to the governmental entity, who shall respond accordingly. DEQ shall not authorize partial compensation for incomplete projects.

(g) **Recordkeeping.** Records required by this Part shall be maintained by the governmental entity for a period of three years after completion of the project.

[OAR Docket #12-652; filed 5-21-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 515. MANAGEMENT OF SOLID WASTE

[OAR Docket #12-654]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [REVOKED]
Appendix H. Procedure for Calculating Closure Cost Estimates for Financial Assurance [NEW]
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [REVOKED]
Appendix I. Procedure for Calculating Post-closure Cost Estimates for Financial Assurance [NEW]

AUTHORITY:
Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, Solid Waste Management Advisory Council powers and duties, 27A O.S. § 2-2-201 and § 2-10-201.

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Public hearing:
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Submitted to Governor:
March 5, 2012
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July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATION BY REFERENCE:
N/A
ANALYSIS:
The Department is proposing to adopt new OAC 252:515 Appendices H and I (each pertaining to procedures for calculating landfill closure and/or post-closure cost estimates for financial assurance) and concurrently revoke the existing OAC 252:515 Appendices H and I. This proposal would result in the removal of the unit costs from the appendices, and updated unit costs would be published in accordance with OAC 252:515-27-34 (Annual adjustments to cost estimates).
CONTACT PERSON:
Mike Stickney, Land Protection Division, Solid Waste Compliance Section, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at Mike.Stickney@deq.ok.gov, phone 405-702-5184, or fax 405-702-5101.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]

APPENDIX H. PROCEDURE FOR CALCULATING CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]

This Appendix presents the worksheet for calculating final closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owner/operators will be able to input site-specific information to calculate the necessary financial assurance.

Table H.1

All site data necessary to calculate estimates of closure and post-closure costs can be gathered by completing Table H.1. Data from Table H.1 should be inserted into Table H.2 of this Appendix and Table I.1 of Appendix I to complete calculations.

Table H.1 Site Data

FACILITY NAME:

PERMIT NUMBER:

DESCRIPTION	QUANTITY	UNITS
Total Permitted Area		acres
Active Portion		
Composite Lined		acres
Soil Lined		acres
Area of Largest Cell/Phase Requiring Final Cap		
Composite Lined		acres
Soil Lined		acres
Perimeter Fencing		linear feet

Groundwater Monitoring Wells		VLF
Methane Gas Probes		VLF
Terraces		linear feet
Letdown Channels		linear feet
Perimeter Drainage Ditches		linear feet
Average Daily Flow		tons/day
Landfill Disposal Cost		$/ton

VLF = Vertical linear feet. The sum of the depths of all monitoring wells

Table H.2

Table H.2 can be used to calculate closure cost estimates for landfills for which site specific data are available. The table is designed to be executed as a computer spreadsheet, but will work equally as well using hand calculations.

1. Input site-specific quantities from Table H.1 into Table H.2, making sure the requisite units are used. Some quantities are already given by the table.

2. Input current year unit costs obtained from the ODEQ website.*

3. For each line of Task/Service items 1 through 4, multiply the value input for quantity by the multiplier and current year unit cost, and enter the resultant value in the Subtotal column.

4. Line 5. Identify each task required by the Closure Plan that is not identified in Table H.2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.
5. Line 6. Add Subtotals for Task/Service items 1 through 5.
6. Lines 7, 8, and 9. Compute Administrative Services, Technical and Professional Services

and Closure Contingency costs by multiplying Line 6 by the multiplier for each respective Item. Enter the resultant values.

7. Line 10. Add lines 6 through 9.

* Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by the ODEQ or adjust currently approved costs for inflation as of April 1st of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

Table H.2 Closure Cost Estimate

FACILITY NAME:

PERMIT NUMBER:

	Task/Service	Quantity	Units	Multiplier[a]	Unit Cost[b]	Subtotal
1	**PRELIMINARY SITE WORK**					
1.1	Conduct Site Evaluation	1	lump sum	1		
1.2	Dispose Final Wastes					
	Average Daily Flow	c[c]	tons/day			
	Disposal Cost	d[d]	tons/day	5(5 days of waste)	e[e]	
1.3	Remove Temporary Building(s)	1	lump sum	1		
1.4	Remove Equipment	1	lump sum	1		
1.5	Repair/Replace		linear feet	0.25(25% of fencing)		
1.6	Clean Leachate Line(s)	1	lump sum	1		
2	**MONITORING EQUIPMENT**					

2.1	Rework/Replace Monitoring Well(s)		VLF	0.25(25% of wells)		
2.2	Plug Abandoned Monitoring Well(s)		VLF	0.25 (25% of wells)		
2.3	Rework/Replace Methane Probe(s)		VLF	0.25 (25% of probes)		
2.4	Plug Abandoned Methane Probe(s)		VLF	0.25 (25% of probes)		
2.5	Rework/Replace Remediation and/or Gas Control Equipment	1	lump sum	0.05(5% of equipment capital cost)	ff	
3	**CONSTRUCTION**					
3.1	Complete Site Grading to include on-and off-site borrow areas		acres	1		
3.2	Construct Final Cap					
	Compacted On-site Clay Cap or		cubic yards	1		
	Compacted Off-site Clay Cap or		cubic yards	1		
	Install Geosynthetic Clay Liner Cap		square feet	1		
3.3	Construct Landfill Gas Venting Layer					

	Place Sand or		acres	1		
	Install Net and Geotextile		square feet	1		
3.4	Install Passive Landfill Gas Vents		acres	1		
3.5	Install Flexible Membrane Liner		square feet	1		
3.6	Drainage Layer					
	Place Sand or		acres	1		
	Install Net and Geonet		square feet	1		
3.7	Place On-site Topsoil		cubic yards	1		
	Place Off-site Topsoil		cubic yards	1		
3.8	Establish Vegetative Cover,including on-and off-site borrow areas		acres	1		
4	**DRAINAGE/EROSION CONTROL**					
4.1	Construct Terraces		linear feet	1		
4.2	Construct Letdown Channels		linear feet	1		
4.3	Clean Perimeter Drainage Ditches		linear feet	0.50(50% of ditches)		
5	**TASKS NOT IDENTIFIED**					

6	**SUBTOTAL**					
7	**ADMINISTRATIVE SERVICES**	1	lump sum	0.10(10%)	g[g]	
8	**TECHNICAL and PROFESSIONAL SERVICES**	1	lump sum	0.12(12%)	g	
9	**CLOSURE CONTINGENCY**	1	lump sum	0.10(10%)	g	
10	**TOTAL FINAL CLOSURE**					h[h]

a. Multipliers are determined by the *Solid Waste Financial Assurance Program Report,* December 22, 2000.

b. Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by ODEQ or adjust currently approved costs for inflation as of April 1st each year using the procedure in OAC 252:515-27-34(a)(2).

c. New facilities: Insert the value for "W" in OAC 252:515-27-8(a)(2). Existing facilities: Insert reported total tonnage for the previous year, divided by 312 operating days per year (52 weeks per year x 6 operating days per week).

d. Insert number of tons/day from above.

e. Insert landfill disposal cost per ton of waste ($/ton).

f. Input capital cost for gas control/remediation equipment, if installed at the site.

g. Input Subtotal from line 6.

h. Add rows 6 through 9.

APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [REVOKED]

APPENDIX I. PROCEDURE FOR CALCULATING POST-CLOSURE COST ESTIMATES FOR FINANCIAL ASSURANCE [NEW]

This Appendix presents the worksheet for calculating final post-closure cost estimates. The tasks and services included in this worksheet are based on the more complex closure requirements for MSWLFs. Some tasks and services may not be required for construction/demolition and non-hazardous industrial waste landfills, nor for other types of solid waste facilities requiring financial assurance. Owner/operators will be able to input site-specific information to calculate the necessary financial assurance.

I.1 Calculating Post-closure Costs

Table I.1 can be used to estimate Post-closure Costs. Table I.1 may be utilized in the same manner as Table H.2 of Appendix H.

1. Input site-specific quantities from Table H.1 of Appendix H into Table I.1, making sure the requisite units are used. Some quantities are already given by the table.

Input current year unit costs obtained from the ODEQ website.*

2. For each line of Task/Service items 1 through 5, multiply the value input for quantity by the multiplier and current year unit cost*, and enter the resultant value in the subtotal column.
3. Line 6. identify each task required by the Post-closure Plan that is not identified in Table I.2. Calculate cost estimates in accordance with OAC 252:515-27-51(d), and input total in the Subtotal column.
4. Line 7. add Subtotals for Task/Service Items 1 through 6.
5. Lines 8, 9, and 10. Compute Administrative Services, Technical and Professional Services and Post-closure Contingency costs by multiplying Line 7 by the multiplier for each respective Item. Enter the resultant values.
6. Line 11. Add lines 7 through 10.

* Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by the ODEQ or adjust currently approved costs for inflation as of April 1st of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

Table I.1 Post-closure Estimate

FACILITY NAME:

PERMIT NUMBER:

	Task/Service	Quantity	Units	Multiplier[a]	Unit Cost[b]	Subtotal
1	**SITE MAINTENANCE**					
1.1	Site Inspections	4	per year	30 (30 yrs) 8 (8 yrs)		
1.2	General Maintenance	1	per year	30 (30 yrs) 8 (8 yrs)		
1.3	Remediation and/or Gas Control Equipment	1	lump sum	0.3[c]	d[d]	
2	**MONITORING EQUIPMENT**					
2.1	Rework/Replace Monitoring Well(s)		VLF	0.25(25% of wells)		
2.2	Plug Abandoned Well(s)		VLF	0.25(25% of wells)		
2.3	Final Plugging of Monitoring Wells		VLF	1		
2.4	Rework/Replace Methane Probe(s)		VLF	0.25(25% of probes)		

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2.5	Plug Abandoned Probe(s)		VLF	0.25(25% of probes)		
2.6	Final Plugging of Methane Probes		VLF	1		
2.7	Final Plugging of Piezometer(s)		VLF	1		
3	**SAMPLING and ANALYSIS**					
3.1	Groundwater Monitoring Wells		wells	60(2/yr x 30yrs) 16(2/yr x 8 yrs)	MSWLF&NHIWe[e] C&D	
3.2	Methane Gas Probes		probes	60(2/yr x 30yrs)		
3.3	Surface Water Monitoring Points		points	60(2/yr x 30yrs)		
3.4	Leachate		sample	60(2/yr x 30yrs)		
4	**FINAL COVER MAINTENANCE**					

4.1	Mow and Fertilize Vegetative Cover		acres	30(30 yrs) 8(8 yrs)		
4.2	Repair Erosion, Settlement, and Subsidence for On-site Soils		acres	60(60 yrs) 16(16 yrs)		
	Repair Erosion, Settlement, and Subsidence for Off-site Soils		acres	30(30 yrs) 8(8 yrs)		
4.3	Reseed Vegetative Cover		acres	0.20(20% reseeded over post-closure period)		

5	LEACHATE MANAGEMENT					
5.1	Clean Leachate Line(s)	1	per year	30 (30 yrs)		
5.2	Maintain Leachate Collection System and Equipment	1	per year	30 (30 yrs)		
5.3	Collect, Treat, Transport, and Dispose Leachate		gal/yr	30 (30 yrs)		
6	TASKS NOT IDENTIFIED					
7	SUBTOTAL					
8	ADMINISTRATIVE SERVICES	1	lump sum	0.06 (6%)	f[f]	
9	TECHNICAL and PROFESSIONAL SERVICES	1	lump sum	0.07 (7%)	f	
10	POST-CLOSURE CONTINGENCY	1	lump sum	0.10 (10%)	f	
11	TOTAL POST CLOSURE					g[g]

a. Multipliers are determined by the *Solid Waste Financial Assurance Program Report*, December 22, 2000.

b. Unit costs for use in completing this table will be updated for inflation by ODEQ on an annual basis. Current costs will be posted on the ODEQ website. Users of this chart shall use costs prepared by ODEQ or adjust currently approved costs for inflation as of April 1st of each subsequent year using the procedure in OAC 252:515-27-34(a)(2).

c. 5% of equipment capital cost, maintenance performed once per 5 yrs for 30 years.

d. Input capital cost for gas control/remediation equipment, if installed at the site.

e. If the approved groundwater monitoring plan requires monitoring for alternative constituents, unit costs shall be calculated in accordance with OAC 252:515-27-52(b) or (c).

f. Input subtotal from line 7.

g. Add lines 7 through 10.

[OAR Docket #12-654; filed 5-21-12]

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

[OAR Docket #12-736]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:619-1-4 [AMENDED]
Subchapter 3. Operation and Maintenance
252:619-3-2 [AMENDED]
252:619-3-3 [REVOKED]
Subchapter 5. Closure Requirements
252:619-5-2 [REVOKED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S.§ 2-2-201; and 27A O.S.§ 2-6-103, 2-6-402 and 2-6-501.
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The DEQ proposes to amend OAC 252:619 to remove language from the title and text concerning the operation, maintenance and closure of land application sites related to total retention lagoon facilities. The DEQ also proposes to move rules pertaining to the operation and maintenance of land application sites to the new Chapter 627 (Operation and Maintenance of Water Reuse Systems). Additionally, the DEQ proposes to require the addition of name and contact number to the existing lagoon signage, which must be posted near or on the fence at each side of the lagoon. Finally, the DEQ proposes several non-substantive changes for clarification.
CONTACT PERSON:
The contact person is Robert Huber. He can be reached at Robert.Huber@deq.ok.gov (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:619-1-4. General requirements for total retention lagoon systems

(a) **Operational requirements.** The permittee shall ensure that the total retention lagoon system is operated in compliance with the terms of the DEQ-issued construction permit and the requirements of this Chapter. When in conflict, the terms of the permit shall supersede the requirements of this Chapter.

(b) **Unauthorized wastes.** The permittee shall take reasonable measures to prevent the introduction of unauthorized industrial wastewater, hazardous substances, chemicals or wastes into the total retention lagoon system.

(c) **Protection of potable water supplies.** The permittee shall prevent cross-connections between wastewater and potable water supplies.

(d) **Discharges prohibited.** The permittee shall operate and maintain the total retention lagoon system so that no part of the system bypasses or discharges wastes or wastewater. All such bypasses and/or discharges shall be considered a violation of this Chapter and be subject to enforcement as an unpermitted discharge to waters of the State in violation of the Oklahoma Pollutant Discharge Elimination System Act.

(1) **Reporting requirement.** The permittee shall ensure that any and all bypasses and/or discharges from a total retention lagoon system are reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form ~~605-011~~ 619-001 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.

(2) **Required response.** Whenever a bypass or discharge occurs, the permittee shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of the bypass or discharge.

(e) **Certified operator required.** The permittee shall ensure that an operator, who is certified pursuant to OAC 252:710 to operate that size and type of total retention lagoon system, is employed to operate the total retention lagoon system.

(f) **Monthly operating report.** The permittee shall complete a DEQ Form 619-001 "Total Retention Lagoon Monthly Operation Report" ("MOR") each month. The permittee shall ensure that the MOR is kept current, is retained for three (3) years and is made available for review upon request by DEQ. Each MOR shall include:

(1) the estimated monthly flow to the total retention lagoon;

(2) the size of the population served by the total retention lagoon system;

(3) the date of each site visit to the total retention lagoon system;

(4) any maintenance performed on the total retention lagoon system; and

(5) the results of any voluntary or DEQ-ordered sampling and analyses of the wastewater in the total retention lagoon system.

(g) **Additional reporting and/or sampling.** DEQ may require additional reporting and/or sampling in any administrative order, closure plan, or other official document issued by DEQ.

(h) **Use of certified laboratories.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories certified by DEQ.

SUBCHAPTER 3. OPERATION AND MAINTENANCE

252:619-3-2. Total retention lagoons

(a) **Erosion control.** The permittee shall prevent erosion of the lagoon by:

(1) Maintaining a 1:3 slope on the inner and outer dikes of the lagoon, unless permitted otherwise;

(2) Using soil, gravel, concrete pads, shallow-root vegetation or other methods of erosion control as needed;

(3) Removing trees and deep-root vegetation from the dikes and bottom of the lagoon in a timely manner to maintain the integrity and stability of the lagoon;

(4) Protecting the inner dikes from wave action;

(5) Protecting the outer dikes from stormwater runoff and floodwaters;

(6) Protecting the dikes from burrowing animals; and

(7) Repairing any damage promptly.

(b) **Freeboard.** The permittee shall ensure that the lagoon has a minimum of three feet (3') of freeboard, unless otherwise specified in the permit.

(c) **Seepage.** The permittee shall, at all times, maintain the integrity of the liner or seal of the total retention lagoon to prevent seepage in excess of five hundred gallons per acre per day (500 gal/acre/day). No action shall take place during the use, maintenance, or operation of the lagoon that would destroy or diminish the effectiveness of any liner or seal, or increase the permeability of the liner or seal. Whenever seepage in excess of five hundred gallons per acre per day (500 gal/acre/day) from the lagoon is suspected or discovered, the permittee shall ensure that the discharge is reported to DEQ at (800) 522-0206 within 24-hours of the incident and that a completed and signed DEQ Form ~~605-011~~ 619-001 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.

(d) **Influent lines.** The permittee shall maintain influent lines to minimize short-circuiting by terminating influent lines at the center of the cell or a point at least one hundred feet (100') from the inside toe of any dike.

(e) **Wastewater depth control structures.** The permittee shall maintain control structures so that they properly control the wastewater depth in cells and route wastewater through the system.

(f) **Piping.** The permittee shall take steps to prevent turtles from clogging lagoon piping.

(g) **Flow measurement.** The permittee shall maintain flow measurement devices in proper working order.

(h) **Treatment.** The permittee shall operate and maintain the lagoon to produce optimum treatment results.

(i) **Fencing.** The permittee shall prevent unauthorized access to the lagoon by maintaining a fence around the lagoon. The fence may not interfere with the wind action to the lagoon's surface or shade the lagoon. Fences must have a lockable gate and must not obstruct maintenance vehicles or equipment. When the lagoon is located within three hundred fifty feet (350') of existing or platted residential or recreational areas, the permittee shall ensure that the lagoon is surrounded by a 6-foot high woven wire fence or equivalent.

(j) **Signs.** The permittee shall maintain a sign near or on the fence on each side of the lagoon site that designates the nature of the facility and advises against trespassing, the name of the owner and a contact phone number.

(k) **Wind action.** The permittee shall prevent any obstructions to wind action of the lagoon by:

(1) removing trees, weeds, cattails, and all other obstructions whenever they appear on or around the dikes or in the lagoon itself; and

(2) mowing the grass around the lagoons and on the dikes frequently enough to prevent the development of any obstructions to wind action.

(l) **Access road.** The permittee must maintain the access road to the lagoon so that it is passable during all weather conditions.

(m) **Other maintenance requirements.** The permittee shall maintain all structures of the lagoon in proper working order.

(n) **Septic conditions prohibited.** The permittee shall operate and maintain the total retention lagoon so that it does not become septic. If a lagoon becomes septic, the permittee shall take immediate steps to correct the condition without violating DEQ rules.

(o) **Vector control.** The permittee shall control vectors. In particular, mosquitoes and flies shall be controlled by:

(1) Maintaining an adequate lagoon depth;

(2) Preventing obstructions to wind action; and

(3) Taking steps to correct septic conditions.

(p) **Surfactants.** The use of surfactants or other chemicals or additives that would increase the seepage rate through a lagoon bottom is specifically prohibited.

252:619-3-3. Land application sites serving total retention lagoons [REVOKED]

~~(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to land application sites serving total retention lagoons:~~

~~(1) **Fencing.** The permittee shall prevent unauthorized access to the land application site by maintaining the required fencing around the site. Public use areas where wastewater is disinfected prior to land application are exempt from the fencing requirements.~~

~~(2) **Signs.** The permittee shall maintain a sign, which describes the nature of the facility and advises against trespassing, on or near the fence on each side of the land application site. Public use areas where wastewater is disinfected prior to land application are exempt from the signage requirements.~~

~~(3) **Legal access to site.** The permittee shall only land apply wastewater to sites for which the permittee has legal access to the property for that purpose.~~

~~(4) **Public use area.** The permittee shall ensure that wastewater is not applied to a public use area that has a *high potential* for skin to ground contact (e.g. football field). The permittee shall ensure that wastewater applied to a public use area that has a *low potential* for skin to ground contact (e.g. golf course) is:~~

~~(A) disinfected before application by maintaining a detectable chlorine residual; and~~

~~(B) applied during times when the public is not present.~~

~~(5) **Equipment maintenance.** The permittee shall maintain all land application equipment in working order.~~

~~(b) **Restrictions.** The permittee shall not land apply wastewater:~~

~~(1) from the cell that receives raw sewage;~~

~~(2) from any cell other than the one specified in the permit;~~

~~(3) to any food crop that may be consumed raw;~~

~~(4) to crops such as corn, wheat and oats, less than thirty (30) days before harvest;~~

~~(5) at rates that allow a discharge from the permitted land application site;~~

~~(6) within one hundred feet (100') of the permitted boundary of the site;~~

~~(7) at a rate that exceeds the nitrogen and phosphorus rates for the crop grown at the site or that results in phytotoxicity;~~

~~(8) that has a dissolved oxygen concentration of less than 2.0 mg/*l*;~~

~~(9) in areas in which it is likely to adversely affect a threatened or endangered species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species;~~

~~(10) during periods of precipitation or while the soil is saturated or frozen; and/or~~

~~(11) on land having a slope greater than five percent (5%) unless erosion or runoff controls are implemented, but in no case on land with greater than ten percent (10%) slope.~~

~~(c) **Records.** The permittee must record on the DEQ Form 619-001 "Total Retention Lagoon Monthly Operation Report" ("MOR") the following information:~~

~~(1) Location, day and hour land application began and ended;~~

~~(2) Method of application;~~

~~(3) Volume of wastewater applied;~~

~~(4) When the conditions of the site require that the wastewater be disinfected before application, the chlorine residual of the wastewater applied;~~

~~(5) Weather conditions during the application period;~~

~~(6) Type of crop, grass or vegetation grown at the land application site; and~~

~~(7) If special analytical testing is required as a condition of the permit or an Administrative Order, the results of the analytical testing, including the name of the individual who collected the samples, when the analysis began, and the name of the certified laboratory.~~

SUBCHAPTER 5. CLOSURE REQUIREMENTS

252:619-5-2. Closure of land application sites associated with total retention lagoons [REVOKED]

~~(a) **Closure.** A specific land application site may be closed at any time by the permittee or by requirement of DEQ.~~

~~(b) **Notice.** The permittee shall submit written notice of the proposed closure of the land application site to DEQ at least ninety (90) days prior to beginning closure activities.~~

~~(c) **Remediation plan.** When site-specific testing and monitoring indicates the presence of pollution or deterioration of a site, DEQ will require the permittee to submit, receive approval of and perform a remediation plan.~~

[OAR Docket #12-736; filed 5-25-12]

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

[OAR Docket #12-737]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:621-1-1 [AMENDED]
Subchapter 3. Permit Procedures
252:621-3-4 [REVOKED]
252:621-3-5 [REVOKED]
252:621-3-6 [REVOKED]
Subchapter 5. Operation and Maintenance
252:621-5-2 [REVOKED]
252:621-5-3 [REVOKED]
252:621-5-4 [REVOKED]
Subchapter 7. Monitoring, Reporting, Inspections and Records Requirements
252:621-7-1 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S.§ 2-2-201; and 27A O.S.§ 2-6-103, 2-6-402 and 2-6-501.
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ANALYSIS:
The DEQ proposes to amend OAC 252:621 to remove language from the title and text concerning the operation, maintenance and closure of land application sites related to non-industrial discharging and public water supply lagoon facilities. The DEQ also proposes to move the rules pertaining to operation and maintenance of land application sites associated with these types of facilities to the new Chapter 627 (Operation and Maintenance of Water Reuse Systems). Finally, the DEQ proposes to revoke redundant language concerning financial assurances.
CONTACT PERSON:
The contact person is Mark Hildebrand. He can be reached at mark.hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:621-1-1. Purpose

This Chapter establishes the operating and closure requirements for all non-industrial discharging and public water supply lagoons ~~and land application of wastewater from said lagoons~~. This Chapter is authorized by 27A O.S.§§ 2-6-101 through 2-6-105,§§ 2-6-401 through 2-6-403 and § 2-6-501.

SUBCHAPTER 3. PERMIT PROCEDURES

252:621-3-4. Financial assurance [REVOKED]

~~(a) If the applicant is not a city, town or other public entity, the applicant shall submit the following information to the DEQ:~~

~~(1) Expected costs for operation and maintenance, replacement and closure;~~

~~(2) Continued existence and financial accountability; and~~

~~(3) Assurance that provisions have been made for continued existence of the operating entity for the expected life of the facility.~~

~~(b) Continued existence may be demonstrated in one of the following fashions:~~

~~(1) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater system for the expected life of the facility; or~~

~~(2) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater system for the life of the system may be submitted to DEQ for approval; and~~

~~(c) Costs for closure of the wastewater system as required by law must be included in any funding plan.~~

~~(d) If the information fails to demonstrate the ongoing viability of the operation, the application will be denied.~~

252:621-3-5. Operating permit application requirements for non-industrial wastewater land application systems [REVOKED]

~~All permit applications shall be typed or computer printed and include:~~

~~(1) the name, address, and telephone of the applicant or the applicant's authorized representative;~~

~~(2) name, mailing address, and telephone number of the owner, and contact person from each source;~~

~~(3) a list of environmental state or federal permits held by the applicant;~~
~~(4) a breakdown of the anticipated types and volumes of wastewater generated including a list of the major commercial or industrial facilities that discharge to the treatment system, and laboratory analyses reports showing wastewater characteristics;~~
~~(5) daily wastewater generation;~~
~~(6) the amount of wastewater from each source expected to be land applied each year of operation;~~
~~(7) identification of specific sites and identify name for each;~~
~~(8) name, address, and telephone number of the site owner and lessee, if any;~~
~~(9) documentation of the applicant's right to use the site, including time restrictions, if any;~~
~~(10) land use descriptions of adjacent property;~~
~~(11) finding descriptions, legal descriptions, and latitude and longitude of each site;~~
~~(12) topography of the site;~~
~~(13) soil types, permeability, infiltration and drainage patterns;~~
~~(14) proposed methods of field types, tillage, crop types and patterns, crop utilization, expected yield and final use of crop;~~
~~(15) depth to groundwater, including highest seasonal groundwater level, and any other data available;~~
~~(16) results of any sampling, analyses or monitoring previously performed by the applicant at the site;~~
~~(17) access controls;~~
~~(18) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;~~
~~(19) information on how wastewater will be transported from the point of generation to the land application site including transfer and storage information and transfer facilities;~~
~~(20) estimated application rate, frequencies, rest periods between applications, and estimated life of the site~~
~~(21) nutrient assessment based on an annual and lifetime use;~~
~~(22) emergency response plan describing the actions to be taken by the applicant including notice for corrective action and remediation associated with spills and releases;~~
~~(23) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;~~
~~(24) Highway map which shows the location of each specific site to nearest residence, communities, cities, towns, schools, highway access roads and airports;~~
~~(25) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minutes series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:~~
~~(A) boundary of the site;~~
~~(B) public water supply sources and treatment facilities;~~
~~(C) pipelines and utility easements;~~
~~(D) oil or gas wells or drilling sites;~~
~~(E) wellhead delineation areas;~~
~~(F) groundwater flow direction;~~
~~(G) waters of the state with special emphasis for "scenic rivers";~~
~~(H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges)~~
~~(I) identification of the 100 year flood plain or floodway if it affects the proposed site;~~
~~(J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c); and~~
~~(K) any additional information determined necessary by the DEQ.~~

252:621-3-6. Certification required [REVOKED]

~~When required by the DEQ, the engineer must certify that the land application system has been designed according to OAC 252:656 and will be operated according to this chapter.~~

SUBCHAPTER 5. OPERATION AND MAINTENANCE

252:621-5-2. Operation and maintenance for non-industrial land application systems [REVOKED]

~~The construction requirements contained in 252:656 shall apply to all non-industrial land application systems.~~
~~(1) Crop application. Wastewater must receive primary treatment and:~~
~~(A) shall not be applied to any food crop that can be eaten raw.~~
~~(B) May be used for irrigation of crops such as corn, wheat and oats, provided a period of 30 days elapses between last application and harvest.~~
~~(2) Multi purpose application. Wastewater applied to a multi purpose use area (for example, golf course) must:~~
~~(A) receive secondary treatment (or equivalent);~~
~~(B) be disinfected;~~
~~(C) be applied during times of non use;~~
~~(3) Weather. Land application shall not occur during periods of precipitation or while the soil is saturated or frozen.~~
~~(4) Endangered or threatened species. Land application shall not occur if it is likely to adverselyaffect a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.~~
~~(5) Topography. A land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%).~~

~~(6) Berms. There shall be no berms or other barriers on a land application site that would cause the pooling or ponding of wastewater at the land application site, nor shall any berms or barriers impede the natural flow of stormwater from the site.~~

252:621-5-3. Restrictions [REVOKED]

~~No wastewater shall be applied:~~

~~(1) in public use areas with high potential for skin to ground contact;~~

~~(2) within 100 feet of the permitted boundary of the site;~~

~~(3) at any site with soil having a natural pH of less than 5.5 unless the soil pH is amended prior to application. Documentation of soil amendment must be placed in the land applier's compliance records; and~~

~~(4) at a rate that exceeds the nitrogen and phosphorus rates for the crop grown and that results in phytotoxicity.~~

252:621-5-4. Construction standards [REVOKED]

~~See OAC 252:656 for construction standards.~~

SUBCHAPTER 7. MONITORING, REPORTING, INSPECTIONS AND RECORDS REQUIREMENTS

252:621-7-1. Reporting, records, compliance and sampling

(a) **Discharging lagoons and other sanitary wastewater disposal systems.** In addition to the provisions of this Chapter, discharging facilities must comply with ~~Chapter 605 of the DEQ rules~~ OAC 252:606.

~~(b) **Recordkeeping for non-industrial wastewater land application facilities.** The owner must develop and retain the following land application records:~~

~~(1) Location, day and hour land application began and ended, and the method of application;~~

~~(2) Analytical data, loading rates, volume and source(s) of wastewater applied;~~

~~(3) Conductivity and pH of wastewater at beginning of application;~~

~~(4) Weather conditions during the application period;~~

~~(5) Type of crop, grass or vegetation grown at land application site;~~

~~(6) Monitoring records, including the date, time, and exact location of sampling or measurement; and~~

~~(7) Analytical results; including the sampler, when analysis began, and the name of the certified laboratory.~~

(~~c~~ b) **Records retention.** All records must be kept on site for DEQ review. The DEQ may require the owner or operator to submit records.

(~~d~~ c) **Additional requirements applicable to all facilities.** Additional or specific sampling, reporting, and/or records requirements may be included or required by the Department in any permit, authorization, order, consent decree, closure plan, remediation plan, or other official document issued by the Department pursuant to applicable law and the provisions of this Chapter.

(~~e~~ d) **Analyses.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories certified by the Department.

(~~f~~ e) **Format required.** Monitoring and sampling information shall be supplied to the Department on forms approved by the Department and developed for the specific purpose or in such other form and format as may be specified by the Department.

[OAR Docket #12-737; filed 5-25-12]

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

[OAR Docket #12-655]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Treatment
252:626-9-2 [AMENDED]
252:626-9-8 [AMENDED]
252:626-9-9 [AMENDED]
252:626-9-14 [NEW]
Subchapter 13. Residuals and Decant Water Management
252:626-13-1 [AMENDED]
252:626-13-2 [AMENDED]
252:626-13-3 [AMENDED]
252:626-13-4 [AMENDED]
252:626-13-5 [AMENDED]

AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; 27A O.S.§ 2-3-402 and 27A O.S. §§ 2-6-103, 2-6-303, 2-6-304 and 2-6-501.

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ANALYSIS:
The DEQ proposes to amend OAC 252:626 as follows: (1) to add a new rule containing standards for anion exchange for nitrate removal; (2) to modify the standards for water treatment plant pretreatment by removing the

provision regarding large volume off-stream storage basins; (3) to modify the standards for residuals management to conform with residual and wastewater management standards in other Chapters; and (4) to make other minor clarifications.

CONTACT PERSON:

The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 9. TREATMENT

252:626-9-2. Pretreatment

(a) Provide pre-sedimentation basins for package and slow sand filter water treatment plants if the raw water turbidity is variable and exceeds 30 NTU at any time during the year. Surface water containing an excessive amount of suspended material or high organic content which cannot be readily removed by a package treatment plant or slow sand filtration requires pre-sedimentation and may require additional treatment prior to conventional treatment.

(b) Pre-sedimentation basins shall be designed in accordance with OAC 252:626-9-8.

(c) Provide pre-sedimentation for microfiltration and ultrafiltration (MF/UF) for removal of total organic carbon or other soluble compounds, including, but not limited to iron and manganese. If the engineering report demonstrates that total organic carbon will not cause disinfection by-products violations then pre-sedimentation is not necessary. Other pretreatment methods, other than pre-sedimentation, shall be based on the results of a three (3) month pilot study. The study shall also determine the need for additional treatment if the water is high in turbidity or includes undesirable soluble constituents such as iron and manganese.

(d) Pretreatment for nanofiltration and reverse osmosis (NF/RO) depends on the quality of the raw water. If the feed water has a turbidity of less than 1 NTU or an SDI of less than 5, then cartridge filters with a pore size range of less than 20 µm are required prior to the NF/RO treatment. If the feed water turbidity is 1 NTU or greater or the SDI is 5 or greater, then a more rigorous method of particulate removal, such as conventional treatment (including media filtration) or MF/UF membranes for particle removal is required. The use of MF/UF for pretreatment is more commonly known as an integrated membrane system (IMS). The IMS is one method allowed for the removal of particulate matter and microorganisms as well as some dissolved contaminants such as hardness, iron and manganese or disinfection by-product (DBP) precursors.

~~(e) Large volume off-stream storage basins will be considered as a pretreatment method on a case-by-case basis.~~

252:626-9-8. Clarification

(a) **Standard design.**

(1) **Rapid mix.** Rapid mix means the rapid dispersion of chemicals throughout the water to be treated. Provide for the following:

(A) equip mixing basins with mechanical mixing devices capable of adjustment to compensate for variations in raw water quality and flow. Commercial in-line static mixers capable of producing results equal to basins containing mechanical mixers at all anticipated flows will be acceptable,

(B) the maximum detention time of the rapid mix basin, at design flow is 30 seconds, and

(C) locate the rapid mix and flocculation basins as close together as possible.

(2) **Flocculation.** Flocculation means the agitation of water at low velocities through gentle stirring by hydraulic or mechanical means~~ for long periods of time~~. Arrange piping to allow either unit to be removed from service without disrupting operation of the treatment plant.

(A) Flow-through velocity must be 0.5 to 1.5 ft/min, with a detention time for floc formation of at least 30 minutes.

(B) Provide variable speed drives to control the speed of agitators to a peripheral paddle speed of 0.5 to 3.0 ft/s.

(C) Locate flocculation and sedimentation basins as close together as possible. The velocity of flocculated water through pipes or conduits to settling basins must be 0.5 to 1.5 ft/s. Design to minimize turbulence at bends and changes in direction.

(D) Provide a basin drain line of at least ~~4~~ four inches (4") in diameter.

(E) Baffling may be used to provide for flocculation. The design shall be such that the velocities and flows in this paragraph will be maintained.

(3) **Sedimentation.** Conventional horizontal flow sedimentation basins shall conform to the following.

(A) Sedimentation must follow flocculation. Arrange piping to allow either unit to be removed from service without disrupting operation of the treatment plant.

(B) The following criteria apply to conventional sedimentation units:

(i) a minimum detention time of 4 hours is required except when used for lime-soda softening of ground water, the settling time is reduced to a minimum of 2 hours,

(ii) design basins to prevent short-circuiting. Design inlets to distribute water equally and at uniform velocities. Open ports, submerged ports, or similar entrance arrangements are required. Design port to provide uniform flows across the basin and control headloss to prevent floc breakage,

(iii) provide outlet weirs and maintain velocities suitable for settling in the basin,

(iv) limit flow rate over the weir to 20,000 gal/day/ft of weir length,

(v) limit the velocity through the basin to 0.5 ft/min,

(vi) design basins with mechanical residuals removal and slope the floor to conform to manufacturer's recommendations. Provide a basin drain line of at least 4 inches in diameter,

(vii) rectangular basins must have a minimum length-to-width ratio of 2:1, and

(viii) make provisions for the operator to observe or sample residuals being withdrawn from the unit.

(C) **Tube settlers.**

(i) Set tubes at a 60-degree angle to the flow.

(ii) A minimum detention time of three (3) hours is required for surface water treatment and two (2) hours for groundwater treatment.

(iii) Design tube settlers to maintain velocities suitable for settling in the basin and to minimize short-circuiting.

(iv) Size drain piping to facilitate a quick flush of the settler units and to prevent flooding other portions of the plant.

(v) Provide sufficient freeboard above the top of settlers to prevent freezing in the units in outdoor installations

(vi) The maximum application rate is 2 gpm per square foot of cross-sectional area.

(vii) Provide flushing lines, equipped with backflow prevention, to facilitate maintenance and cleaning.

(b) **Solids contact unit.**

(1) **Installation of equipment.** Supervision of all mechanical equipment installation by a representative of the manufacturer at the time of installation and initial operation is required.

(2) **Sampling taps.** Adequate piping with sampling taps located to permit the collection of samples from critical portions of the units are required.

(3) **Chemical feed.** Apply chemicals at points and means necessary to ensure satisfactory mixing with the water.

(4) **Mixing.** Rapid mix units ahead of the solids contact units, must comply with OAC 252:626-9-8 (a)(1). Construct solids contact mixing devices to provide good mixing of raw water with previously formed residuals particles, and prevent deposition of solids in the mixing zone.

(5) **Flocculation.** Flocculation equipment must:

(A) be adjustable (speed or paddle pitch),

(B) provide for coagulation in a separate chamber or baffled zone within the unit, and

(C) provide a combined flocculation and mixing period of not less than 30 minutes.

(6) **Residuals concentrators.** Provide either internal or external concentrators to obtain concentrated residuals with a minimum of wastewater.

(7) **Residuals removal.** Provide units with suitable controls for residuals withdrawal and the following:

(A) residuals pipes not less than 4 inches in diameter and equipped with appropriate cleanouts to facilitate cleaning,

(B) entrance to residuals withdrawal piping that will prevent clogging,

(C) valves located outside the tank for accessibility, and

(D) the ability for the operator to observe and sample residuals being withdrawn from the unit.

(8) ~~**Detention**~~ **Settling zone detention period.** Minimum detention times for the settling zone (excluding the zones for mixing, flocculation, and sludge collection) are:

(A) three hours for suspended solids contact clarifiers and for softeners treating surface water, and

(B) one and ~~a half~~ one-half hours for suspended solids contact softeners treating only groundwater.

(9) **Suspended slurry concentrate.** Design softening units so that continuous slurry concentrates of 1% or more, by weight, can be maintained.

(10) **Weirs or orifices.** Design overflow weirs so that water at the surface of the unit does not travel more than 10 feet horizontally to the collection trough.

(A) Weirs must be adjustable, and at least equivalent in length to the perimeter of the tank.

(B) Do not exceed weir loading rates of:

(i) 14,400 gal/day/ft of weir length for units used as clarifiers, and

(ii) 28,800 gal/day/ft of weir length for units used as softeners treating only groundwater.

(C) Weirs must provide uniform rise rates over the entire area of the tank.

(D) Where orifices are used, the loading rates per foot of launder rates shall be equivalent to the weir loading rates.

(11) **Upflow rates.** Do not exceed upflow rates of:

(A) 1.0 gal/min/ft^2 of area at the residuals separation line for units used as clarifiers, and

(B) 1.75 gal/min/ft^2 of area at the slurry separation line, for units used as softeners treating only groundwater.

252:626-9-9. Filtration

(a) **Filtration processes.** When filtration is required, utilize one of the following:

(1) Gravity sand filtration

(A) Slow sand filtration

(B) Rapid sand filtration

(2) Pressure sand filtration

(3) Membrane processes

(b) **Appurtenances.**

(1) Design filters with filter rate controllers that ensure the rated capacity of the filter will not be exceeded.

(2) Head loss through the filter media is monitored by differential pressure-cell devices that measure the water pressure above and below the filter media. The head loss sensor connection to the filter box should be located approximately four inches (4") above the top of the wash-water collection trough to prevent the wash water from

entering the sensor. A sediment trap with a drain shall be installed on the sensor line to capture any sediment that may enter the line. The end of the sensor shall be turned up, keeping a full column of water in the line at all times to minimize air entrainment. A fine mesh stainless steel screen shall be installed on the end of the sensor to prevent clogging of the filter media.

(3) Include provisions for draining the filters to waste with appropriate measures for backflow prevention.

(4) Provide a means to sample from the combined filter effluent line.

(5) Provide continuous online turbidimeters with a recording device on the effluent line of each filter.

(c) **Slow sand filter design.**

(1) Slow sand filters are allowed for water supplies where raw water turbidity is less than 10 NTU or where this turbidity value can be obtained by pretreatment. Slow sand filters consist of 24 to 48 inches of sand, which has an effective size of 0.15 to 0.30 mm and a uniformity coefficient equal to or less than 2.5 supported by torpedo sand and graded gravel.

(2) A minimum of two filters shall be provided. Design capacity shall be achievable with the largest filter out of service.

(3) Provide for piping for ripening of the filter media.

(4) Water depth above the filter sand surface must be 3 to 5 feet with 6 inches of freeboard.

(5) Provide an underdrain system consisting of a manifold and collector laterals. Construct laterals of open joint, porous or perforated pipe or conduits with even spacing between laterals.

(6) Support media must conform to OAC 252:626-9-9(d)(6).

(7) Provide an orifice on the outlet line from each filter, limiting the flow of water through the system to 50 gal/day/ft^2 of surface area. Size orifices in accordance with Appendix E, Table II. Locate the orifice at least 1 inch above the initial height of the filter sand surface. Alternatively, the outlet line equipped with an orifice may terminate in a weir box with the weir elevation at least 1 inch above the initial height of the filter sand surface.

(8) Equip each filter effluent line with a rate of flow indicator.

(d) **Rapid rate gravity filters.**

(1) **Pretreatment.** Pretreat water to be processed in rapid rate gravity filters prior to filtration by flocculation, coagulation and sedimentation.

(2) **Rate of filtration.**

(A) The maximum filtration rates:

(i) single media filter is 2 gal/min/ft^2 surface area,

(ii) dual media filter is 3 gal/min/ft^2 surface area, and

(iii) multi-media filter is 4 gal/min/ft^2 surface area.

(B) Higher filtration rates will be considered only after pilot studies show that a higher rate is suitable for the raw water source. Approval of higher rates will require continuous monitoring of raw, settled and finished water for turbidity.

(3) **Structural details and hydraulics.**

(A) Define the hydraulic gradient across the rate-of-flow controller on the plans and specifications. Provide for a positive head at the throat of the controller when operating at the design flow rate. Show the entire hydraulic gradient from top of filter to clear well on the plans.

(B) Provide for the following:

(i) vertical walls within the filter,

(ii) no protrusion of filter walls into filter media,

(iii) head room to permit normal inspection and operation,

(iv) minimum depth of filter box of 8.5 feet,

(v) minimum water depth of 3 feet above the surface of filter media,

(vi) trapped effluent to prevent backflow of air to the bottom of the filters,

(vii) a minimum curb height of 4 inches must surround the filters to prevent the entrance of floor drainage,

(viii) overflow with discharge to backwash wastewater facilities,

(ix) maximum water velocity of 2 ft/s in pipes and conduits to filters,

(x) cleanouts and straight alignment for influent pipes or conduits where solids loading is heavy, or following lime-soda softening,

(xi) washwater drain capacity sufficient to carry maximum flow and equipped with an air gap a minimum of 2 times the diameter of the drain line,

(xii) walkways around filters to be a minimum of 24 inches wide, and

(xiii) safety handrails or walls around filter areas adjacent to walkways.

(4) **Washwater troughs.** Design washwater troughs as follows:

(A) bottom elevation above the maximum level of expanded media during washing,

(B) a 2-inch freeboard at the maximum rate of wash,

(C) the top edges to be level,

(D) spacing so that each trough serves an equal number of square feet of filter area, and

(E) do not exceed a 3 foot maximum horizontal travel of suspended particles to trough.

(5) **Filter material.** The media must be clean silica sand or other natural or synthetic material meeting AWWA standard specifications.

(A) Silica sand (single media) must be a total depth of not less than 24 inches and generally not more than 30 inches, an effective size of 0.45 - 0.55 mm and a uniformity coefficient not greater than 1.65.

(B) Anthracite coal (single media) must be a total depth of 30 to 36 inches of clean crushed anthracite

coal, an effective size of 0.45 - 1.2 mm and a uniformity coefficient not greater than 1.65.

(C) Silica sand and anthracite coal (dual media) must be a total depth of 24 to 30 inches with at least 12 inches of sand.

(i) Sand must have an effective size of 0.45 - 0.55 mm and a uniformity coefficient not greater than 1.65.

(ii) Anthracite must have an effective size of 0.45 - 1.2 mm and a uniformity coefficient not greater than 1.85.

(D) Garnet, silica sand, and anthracite (multi-media) must have a total depth of media of at least 30 inches with a minimum of 4.5 inches of garnet, 9 inches of silica sand, and 16.5 inches of anthracite.

(i) Garnet must have an effective size of 0.15 - 0.35 mm.

(ii) Silica sand must have an effective size of 0.45 - 0.55 mm and a uniformity coefficient not greater than 1.65.

(iii) Anthracite must have an effective size of 0.45 - 1.2 mm and a uniformity coefficient not greater than 1.85.

(E) Granular activated carbon as a single media may be considered for filtration only after pilot or full scale testing and with prior approval of the DEQ. Granular activated carbon use is covered in 252:626-9-5.

(6) **Supporting media.**

(A) **Torpedo sand.** Provide a 3-inch layer of torpedo sand, with an effective size of 0.8 - 2.0 mm, and a uniformity coefficient not greater than 1.7, as a supporting media for filter sand.

(B) **Gravel.** Gravel, when used as supporting media, must consist of hard, rounded particles and not include flat or elongated particles. The coarsest gravel must be 2-$\frac{1}{2}$ inches in size when the gravel rests directly on the strainer system, and extends above the top of the perforated laterals.

(i) Provide at least 4 layers of gravel in accordance with Appendix E.

(ii) Reduction of gravel depths may be considered upon justification to the DEQ when proprietary filter bottoms are specified.

(7) **Underdrainage system.**

(A) Design all filter piping based on a minimum flow rate of 5 gal/min/ft^2 of surface area.

(B) Design underdrainage system to collect water with minimum uniform loss-of-head over the filter bed during filtration and for uniform upward velocities throughout the entire filter bed during the backwash process.

(C) Do not use porous types of underdrainage systems where the water has appreciable iron or manganese content, or where softening by lime is considered.

(D) For underdrainage systems using strainers, the maximum ratio of area of strainer openings to area of filter is 0.003.

(E) Direct laterals perforations without strainers downward.

(F) Total cross-sectional area of laterals on underdrain systems must be twice the cross-sectional area of the final openings.

(G) Design the cross-sectional area of the manifold to be twice the cross-sectional area of the laterals in order to minimize friction loss.

(H) Design the manifold so that air cannot accumulate as the result of slope or connection to effluent piping.

(8) **Rate of flow controllers.** Equip each filter with a rate of flow controller to ensure that the rated capacity of each filter is not exceeded during operation of other filters.

(9) **Surface wash or subsurface wash.** Surface or subsurface wash facilities are required except for filters used exclusively for iron or manganese removal, and may be accomplished by a system of fixed nozzles or a revolving-type apparatus.

(A) Install a reduced pressure zone (RPZ) back-flow preventer on surface wash units and the potable water supply.

(B) Minimum water pressure is 45 psi on the high side of the pressure-reducing valve.

(C) Install a pressure regulator on the surface wash supply line.

(D) The minimum design flow rate is 2.0 gal/min/ft^2 of filter area for fixed nozzle designs and 0.5 gal/min/ft^2 for revolving arm designs.

(E) Air-operated surface wash systems are allowed.

(10) **Air scouring.**

(A) Design underdrain to accommodate air scour piping, when piping is installed in the underdrain.

(B) Air flow for scouring the filter must be 3-5 standard ft^3/min/ft^2 of filter area when introduced in the underdrain.

(C) Make provisions to avoid excessive loss of filter media during backwashing.

(D) Air must be free from contamination.

(E) Place the air scour distribution systems below the filter media and supporting bed interface.

(F) Do not use flexible hose piping that is capable of collapsing when not under pressure, or of materials easily eroded at the orifice by high velocity air.

(G) To prevent short-circuiting, do not place air delivery piping in the filter media.

(H) Design for ease of maintenance and replacement of air delivery piping.

(I) Design the backwash water delivery system for 15 gal/min/ft^2 of filter surface area. Where design includes air scour, backwash water rate must be variable with a normal operating range up to 8 gal/min/ft^2 unless experience shows that a higher rate is necessary to remove scoured particles from filter media surfaces.

(11) **Backwash.** Make provisions for backwashing filters as follows:

(A) a minimum backwash rate of 15 gal/min/ft^2, or at a rate necessary for 50 percent expansion of the filter bed. A reduced rate of 10 gal/min/ft^2 may be acceptable for full depth anthracite or granular activated carbon filter,

(B) filtered water must come from washwater tanks, washwater pump(s), high service main, or a combination of these,

(C) duplicate washwater pumps unless an alternate means of obtaining washwater is available,

(D) sufficient water to backwash 1 filter for at least 15 minutes at design backwash rate,

(E) regulator or control valve for each filter to obtain desired rate of filter wash,

(F) rate-of-flow indicator on main washwater line, located so that it can be easily read by the operator during the back-washing process, and

(G) design to prevent rapid changes in backwash water flow.

(e) **Rapid rate pressure filters.**

(1) **General.** Rapid rate pressure filters are only allowed for iron and manganese removal for ground water systems.

(2) **Details of design.** Provide the following:

(A) pressure gauges on inlet and outlet pipes of each filter,

(B) filtration and backwashing of each filter individually,

(C) minimum side wall shell height of 5 feet. A corresponding reduction in side wall height is acceptable where proprietary bottoms permit reduction of the gravel depth,

(D) top of washwater collectors to be at least 18 inches above surface of media,

(E) underdrain system to efficiently collect the filtered water and to uniformly distribute the backwash water at a rate no less than 15 gal/min/ft^2 of filter area,

(F) an air release valve on the highest point of each filter,

(G) an accessible manhole to facilitate inspections and repairs,

(H) means to observe wastewater during backwashing,

(I) construction to prevent cross-connection,

(J) rate of filtration must not exceed 3gal/ft^2 of filter area, and

(K) sufficient information on the filter media to allow review and approval on a case-by-case basis.

(f) **Membrane filtration.** There are four categories of membrane filtration: microfiltration (MF), ultrafiltration (UF), nanofiltration (NF) and reverse osmosis (RO). For the purposes of this design standard, membranes shall be defined strictly by pore size as follows: MF, 0.1 - 0.2 µm; UF, 0.01 - 0.1 µm; NF, 0.001 - 0.01 µm; and RO 0.0001 - 0.001 µm. Using these membrane sizes, MF and UF are used for particle and microbial removal, while NF and RO reject most dissolved contaminants.

(1) **Source water testing.** Source water shall be tested for all parameters that may affect membrane filtration and finished water quality. Historic information shall be reviewed to determine water quality extremes that may be expected. Tabulated results of tests done, summaries and conclusions shall be submitted as part of the engineering report proposing membrane filtration.

(2) **Pilot plant verification study.** Prior to initiating the design of a membrane treatment facility, the DEQ must be contacted to determine if a pilot plant study is required to determine the best membrane to use, type of pretreatment, type of post treatment, the blending ratio (blending is not allowed if the source water is surface water or GWUDI), the amount of reject water produced, process efficiency, process control monitoring, cold and warm water flux, fouling potential, operating and TMP, differential pressure and other design criteria. The DEQ must be contacted prior to iniating any pilot study to establish a protocol. The use of membrane processes for treatment of surface water shall require a pilot study for a minimum duration of three (3) months during the time period identified as having the historically poorest water quality for contaminants tested.

(3) **Log inactivation.** Challenge testing removal efficiency for *Giardia* and *Cryptosporidium* shall be accepted by the DEQ if the system or modules meet the following:

(A) Challenge testing shall be conducted according to the criteria established by 40 CFR § 141.179 (b)(2) and show at a minimum 2.5 log removal of *Giardia* and 2.0 log removal for *Cryptosporidium*.

(B) At least 0.5 log removal credit shall be from approved disinfection process using chlorine, chlorine dioxide, ozone or UV.

(4) **Membrane materials.** Provide for compatibility of membrane material and the use of oxidants in the engineering report.

(5) **Pretreatment.** Membrane processes treating surface water shall require pretreatment in accordance with OAC 252:626-9-2. NF or RO processes treating surface water shall require pre-sedimentation in accordance with OAC 252:626-9-2 (d).

(6) **Post treatment.** Post treatment shall be addressed in the engineering report, which shall demonstrate the degasification of carbon dioxide, hydrogen sulfide removal, organic removal, pH, hardness adjustment for corrosion control, and disinfection as a secondary pathogen control for the distribution system.

(7) **Cross-connections.** Membrane systems piping for feed water, filtrate, backwash water, waste and chemical cleaning shall be designed to prevent any cross connection with any potable water supply, in accordance with OAC 252:626-5-15.

(8) **Flow meters.** Flow meters shall be provided on the source water influent piping, the plant finish water piping and on membrane backwash piping.

(9) **Pressure gauges.** Pressure gauges shall be provided on the influent and effluent piping to each membrane unit.

(10) **Turbidity monitoring.** Turbidity monitoring equipment shall be required on all membrane processes treating surface water and GWUDI. Turbidity monitoring equipment shall be installed on all influent and effluent piping of membrane units. Continuous turbidity recording equipment shall be provided on the effluent piping and connected to an alarm system to warn operators of an excessive turbidity breakthrough.

(11) **Membrane cleaning.** A schedule and procedure for proper membrane cleaning shall be developed based on manufacturer's recommendations to prevent contamination of both raw and finished water. The Clean-In-Place procedures shall be approved by the DEQ. Chemicals shall meet AWWA, ANSI and/or NSF requirements, where applicable. Only treatment devices approved by ANSI or NSF shall be used.

(12) **Direct testing equipment.** Equipment for direct testing shall be provided to monitor membrane integrity and to detect and locate defects or breaches that could allow raw water to be diverted around the membrane process.

(13) **Indirect testing.** The membrane system shall be designed to conduct and record indirect integrity continuously on each membrane unit.

(14) **Redundancy.** Redundancy of control components, including, but not limited to, valves, air supply and computers shall be required. Provide membrane units to meet the design capacity with the largest unit out of service.

(15) **Flux rates.** The design engineer shall address the following factors in the engineering report and/or pilot study:

(A) Flux rate shall be based upon the coldest average monthly temperature anticipated and the reference temperature (20° Celsius for MF/UF and 25° Celsius for RO/NF).

(B) Chemical cleaning strategy shall be determined to restore membrane permeability and acceptable flux without damaging the membrane integrity.

(C) Backwash strategies shall be implemented for MF/UF membranes to enhance membrane flux and to extend intervals between chemical cleanings.

(D) Flux rate shall be guaranteed by the manufacturer for a minimum of one (1) year.

(16) **Backwashing.** Provisions for backwashing shall be included in the design according to the manufacturer's recommendations.

(17) **Disinfection.** The system shall be properly disinfected and water shall be run to waste each time the membrane units are opened for maintenance. Certain disinfectants shall not be used through the membranes, if prohibited by the manufacturer.

(18) **Reject water and solids.** Waste from membrane filtration shall be handled in accordance with the requirements in OAC 252:626-13.

(19) **Operation and maintenance requirements.** Operation and maintenance manuals for membrane filtration systems shall be in accordance with OAC 252:626-3-7 (c)(6).

252:626-9-14. Anion exchange for nitrate removal

(a) **Pilot study.** A pilot study protocol shall be approved prior to conducting the pilot study. A pilot study is required prior to submission of an engineering report and must be conducted for a minimum duration of time sufficient to process water through at least one full bed volume and resin regeneration cycle, or 3 days, whichever is longer. The results of the pilot study shall be included in the engineering report.

(b) **Pretreatment.** Pretreatment shall be required if the total concentration of iron, manganese, and heavy metals exceeds 0.1 mg/L.

(c) **Process Design.**

(1) **Redundancy.** Redundancy of control components, including, but not limited to, valves, air supply and computers, shall be provided. Anion exchange units shall be provided that meet the design capacity at a level below the nitrate/nitrite MCL with the largest unit out of service.

(2) **Automatic controls.** Automatic regeneration based on volume of water treated shall be provided unless manual regeneration can be justified and is approved by DEQ. A manual override shall be provided for all automatic controls.

(3) **Exchange capacity.** The design capacity of the anion exchange system shall not exceed the manufacturer's recommended design capacity of the resin for nitrate removal and regeneration.

(4) **Flow rates.** The design shall not exceed 7 gallons/min/ft^2 of bed area for the treatment flow rate. The backwash flow rate should be 2-3 gallons/min/ft^2 of bed area with a fast rinse approximately equal to the service flow rate.

(5) **Flow meters.** Flow meters shall be provided on the source water influent piping and the plant finished water piping.

(6) **Blending.** If a portion of the water is bypassed around the treatment unit and blended with the treated water, the maximum blend ratio allowable must be determined based on the highest anticipated raw water nitrate level. If a bypass line is provided, a totalizing meter and a proportioning or regulating device or flow regulating valves must be provided on the bypass line.

(7) **Stabilization.** Stabilization for corrosion control shall be provided.

(8) **Appurtenances.** An adequate underdrain and supporting gravel system, brine distribution equipment, and cross connection control shall be provided.

(9) **Construction material.** Pipes and contact materials must be resistant to the aggressiveness of salt.

(10) **Cross connections.** Anion exchange system piping shall be designed to prevent any cross connection with any potable water supply, in accordance with OAC 252:626-5-15.

(d) **Sampling and monitoring.**

(1) **Sampling taps.** Smooth-nose sampling taps for the collection of representative samples shall be provided. The taps shall be located to provide sampling of the anion exchange unit influent, effluent, and blended water.

Sampling taps for the blended water shall be located at least 20 feet downstream from the point of blending.

(2) **Water quality test equipment.** Test equipment for pH, alkalinity, stability, total hardness, and nitrate shall be provided to determine treatment effectiveness.

(3) **Monitoring.** The treated water nitrate/nitrite level shall be monitored using continuous monitoring and recording equipment with a high nitrate level alarm. In addition to continuous monitoring and recording equipment, the finished water nitrate/nitrite levels shall be determined (using a test kit) no less than once per day, preferably just prior to regeneration of the unit.

(e) **Brine System.**

(1) **Brine and salt storage tanks.** Cover brine measuring or salt dissolving tanks and wet salt storage facilities and construct them of corrosion-resistant material. The make-up water inlet shall have a free fall discharge of two pipe diameters above the maximum liquid level of the unit or obtain DEQ approval of other methods of protection from back-siphonage. Support the salt on graduated layers of gravel with a suitable means of collecting the brine. Equip wet salt storage basins with manhole or hatchway openings having raised curbs and watertight covers with overhanging edges similar to those required for finished water storage. Overflow, where provided, must have a free fall discharge and terminate at an approved brine waste disposal facility.

(2) **Salt storage capacity.** Design salt storage large enough to accommodate a 30-day supply.

(3) **Housing.** Enclose and separate salt storage from other operating areas.

(f) **Waste disposal.** A DEQ approved disposal plan is required for brine waste. If brine waste is disposed of in a lagoon, then the lagoon must be permitted and constructed in accordance with OAC 252:656 and lined with a synthetic liner in accordance with the requirement contained in OAC:626-13-4.

SUBCHAPTER 13. RESIDUALS AND DECANT WATER MANAGEMENT

252:626-13-1. General

(a) Provide for proper disposal of WTP waste such as sanitary, laboratory, clarification residuals, softening residuals, iron residuals, filter backwash water, and brines.

~~(b) An approved Residuals Management Plan is required for storage, disposal, or reuse of WTP residuals, including residuals from iron and manganese removal plants.~~

(~~c~~b) Do not discharge wastewater to waters of the state without first obtaining an OPDES permit from the DEQ.

~~(d) WTP residuals may be discharged to a sanitary sewer, provided the discharge will not cause pass-through or interference to the publicly-owned treatment works and the owner of the treatment works agrees to accept the discharge. A pre-treatment permit may be required if the discharge to the publicly-owned treatment works meets the requirements of 40 CFR, Part 403. Where discharging to a sanitary sewer, a flow equalization system may be required to prevent the overloading of the sewer and interference with the waste treatment processes.~~

~~(e) Mechanical dewatering of residuals is acceptable. Mechanical dewatering equipment will be approved on a case-by-case basis.~~

~~(f) Provide storage facilities for concentrated residuals.~~

(~~g~~c) Discharge sanitary waste from water treatment plants, pumping stations, etc., directly to a sanitary sewer system or to an on-site waste treatment facility constructed and approved in accordance with OAC 252:641 or OAC 252:656.

~~(h) The waste from ion exchange plants, demineralization plants, etc. that cannot flow to a sanitary sewer or meet discharge permit requirements without cost prohibitive treatment may flow to evaporation ponds meeting the requirements of OAC 252:626-13-4.~~

~~(i) A permit is required for the land application of WTP residuals. If the residuals are being applied as a fertilizer or soil amendment, the Oklahoma Department of Agriculture, Food and Forestry regulations apply.~~

~~(j) The requirements of OAC 252:515 apply to WTP residuals disposal in landfills.~~

~~(k) A permit is required if wastewater is to be land applied from a water treatment plant. The requirements contained at OAC 252:626-13-5 shall be submitted to the DEQ before a permit may be issued.~~

252:626-13-2. Residuals ~~Management Plan~~ management plan

(a) An approved Residuals Management Plan is required for storage, disposal or reuse of WTP residuals, including residuals from iron and manganese removal plants. When a permit is required, a residuals management plan shall be filed with the DEQ and shall include the following:

(1) estimate the volume of residuals produced using Appendix F,

(2) method of residuals management and storage,

(3) method for drying residuals,

(4) characterization of residuals, and

(5) method of ultimate disposal or reuse.

(b) WTP residuals may be discharged to a sanitary sewer, provided the discharge will not cause pass-through or interference to the publicly-owned treatment works and the owner of the treatment works agrees to accept the discharge. A pre-treatment permit may be required if the discharge to the publicly-owned treatment works meets the requirements of 40 CFR, Part 403. When discharging to a sanitary sewer, a flow-equalization system may be required to prevent the overloading of the sewer and interference with the waste treatment processes.

(c) Mechanical dewatering of residuals is acceptable. Mechanical dewatering equipment will be approved on a case-by-case basis.

(d) Storage facilities shall be provided for concentrated residuals.

(e) An approved sludge management plan is required for the land application of WTP residuals. If the residuals are being applied as a fertilizer or soil-amendment, the Oklahoma Department of Agriculture, Food and Forestry regulations apply.

(f) The requirements of OAC 252:515 apply to WTP residuals disposal in landfills.

252:626-13-3. Drying beds

~~Design drying~~ Drying beds shall be designed based on the amount of residuals produced and other site specific criteria including climatic conditions, quantity of residuals products, the method and frequency of solids removal, and land requirements. ~~Include~~ The design shall include the following:

(1) a minimum total filter area, regardless of the volume of water to be handled, of 100 ft^2,

(2) protection from flooding by surface runoff or floodwaters, in accordance with OAC 252:626-5-3,

(3) ~~design~~ drying beds to facilitate maintenance, mechanical cleaning, and removal of surface sand and residuals,

(4) drying bed media consisting of a minimum of 12 inches of sand, 3 inches of supporting gravel or torpedo sand, and 9 inches of gravel in graded layers. Wash all sand and gravel to remove fines,

(5) drying bed sand with an effective size of 0.8 to 1.2 mm and a uniformity coefficient not to exceed 1.7. Alternate bed material will be considered on a case-by-case basis,

(6) an adequate under-drainage collection system to permit satisfactory discharge of the filtrate to the backwash lagoons, and

(7) surface area ~~shall be~~ designed so that during any one filtration cycle, no more than 2 feet of wastewater will accumulate over the sand surface.

252:626-13-4. Lagoons

(a) **General.** Lagoons used for the treatment of WTP waste shall be designed, permitted and constructed in accordance with OAC 252:656-11.~~Provide for~~ In addition, lagoon designs shall include the following:

(1) two or more ~~lagoons~~ lagoon cells that provide for a minimum residual storage time of six (6) months per lagoon cell,

(2) design lagoons for the periodic removal of residuals as required in OAC 252:631-3-19,

~~(3) dikes, deflecting gutters or other means of diverting surface water so that it does not flow into the lagoons,~~

~~(4) construct dikes of relatively impervious material and compacted to 90 percent standard proctor density. The top of the dike must be a minimum of 8 feet wide. Inner and outer dike slopes must not be steeper than 3 horizontal to 1 vertical (3:1),~~

~~(5) erosion control of the dike by seeding or sodding with Bermuda grass. Riprap is required on lagoons larger than 5 acres,~~

~~(6) seal the bottom of the lagoons up to the maximum water level in accordance with OAC 252:616,~~

~~(7) a minimum depth of 8 feet,~~

~~(8) a minimum of 3 feet freeboard,~~

(~~9~~ 3) adjustable decanting device,

(~~10~~ 4) effluent sampling point (if lagoon is permitted to discharge),

(~~11~~ 5) a pond gauge, to measure the level of residuals in the lagoon~~, and~~

~~(12) adequate fencing with a gate to prevent entrance by livestock and discourage trespassing if the lagoon is not located in the plant site, with permanent signs along the fence that designate the nature of the facility. A sign shall be placed on each side of the site. The sign shall include the name and contact information (address, phone number and e-mail address) for the owner.~~

~~(b) **Surface evaporation lagoons (total retention).**~~

~~(1) Size lagoons to store both the expected wastewater and residuals produced.~~

~~(2) Provide sufficient surface area to evaporate the wastewater generated.~~

~~(3) Base evaporation rates on the annual average pan evaporation minus the 90th percentile annual rainfall.~~

(~~c~~ b) **Surface water treatment wastewater handling.** Design for:

(1) at least 4-hours settling time prior to recycling,

(2) wastewater to be returned to a point prior to the point of primary coagulant addition, and

(3) wastewater to be returned at an instantaneous rate of 10 percent or less of the raw water entering the plant. Total flow shall not exceed the WTP maximum design flow rate.

(c) **Sealing of lagoons.** Water treatment plants utilizing conventional, microfiltration or softening treatment may seal the lagoons with any approvable material listed in OAC 252:656. For all othertypes of treatment, the lagoons shall have a synthetic liner that meets the requirements of OAC 252:656.

(d) **Evaporation ponds.** The waste from ion exchange plants, demineralization plants, etc., that cannot flow to a sanitary sewer or meet discharge permit requirements without cost prohibitive treatment may flow to evaporation ponds meeting the requirements of OAC 252:619, 252:621 and 252:656.

252:626-13-5. Land application of ~~wastewater~~ decant water or residuals

A permit is required if WTP decant water or WTP residuals are to be land applied from a water treatment plant.Refer to OAC 252:621, 252:627 and 252:656 for permit and operations criteria.

~~When wastewater from a water treatment plant is to be land applied, the following shall be required:~~

~~(1) Land apply wastewater in a manner to prevent surface runoff and to control objectionable odors.~~

~~(2) Land application of wastewater can only occur for the purpose of beneficial use.~~

~~(3) The land application site shall have minimal slope or be contoured to prevent ponding and soil erosion. No application shall occur on land having a slope exceeding five percent (5%) unless erosion and runoff control provisions are implemented. Land having a slope greater than ten percent (10%) may be utilized for land application only with Department approval. For land application for dust~~

~~suppression on roadways, clean wastewater hauling vehicles prior to leaving the site with provisions for disposition of rinse water.~~

~~(4) Land application shall be uniform over each plot (a predetermined portion of the land application site) unless otherwise permitted by the DEQ.~~

~~(5) Annual land application shall not exceed permit limits set for each constituent and shall not be applied in rates that result in toxicity to site vegetation.~~

~~(6) Land application shall occur on soils which exhibit physical and chemical properties that promote assimilation and treatment of the wastewater (e.g., infiltration rate, storage capacity, or other properties) and which support vegetation (e.g., native grasses) or in order to prevent erosion of the soil (such as dust suppression). Add minerals and other materials to ensure levels of oxygen, pH, nutrients and moisture as needed to sustain native vegetation.~~

~~(7) The soil profile depth to bedrock shall be three (3) times the depth of incorporation or three (3) feet, whichever is greater unless prior written approval is obtained from the DEQ.~~

~~(8) The municipality, rural water district or entity in control of the water treatment plant shall have the right to control the use of the land application site and shall maintain at least 10 foot wide setbacks on the boundaries of each site, and take other actions necessary to prevent runoff and aerosols from leaving the site as required by the DEQ. A buffer is not required between adjacent sites.~~

~~(9) The following records must be kept at the water treatment plant:~~

~~(A) location, day and hour land application began and ended, and the method of application;~~

~~(B) analytical data, volume and source(s) of wastewater applied;~~

~~(C) loading rates;~~

~~(D) weather conditions during the application period;~~

~~(E) type of crop, grass or vegetation grown on site;~~

~~(F) pH of wastewater at beginning of application, or weekly if application exceeds seven consecutive days; and~~

~~(G) monitoring records, including the date, time and exact place of the sampling or measurement, the name of the sampler, when analysis began, the name of the certified laboratory and the analytical results.~~

~~(10) Divert stormwater run-off around land application sites.~~

~~(11) The following prohibitions shall apply to all land application sites:~~

~~(A) Do not land apply wastewater if it adversely affects a threatened or endangered species listed under section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.~~

~~(B) Do not land apply during rainfall, or when saturated or frozen soil hinders absorption.~~

~~(C) Do not land apply or allow runoff of wastewater to wetlands or waters of the State. Discharges to waters of the State are prohibited without a discharge permit under OAC 252:606.~~

~~(D) The land application of demineralized water is prohibited.~~

[OAR Docket #12-655; filed 5-21-12]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 627. OPERATION AND MAINTENANCE OF WATER REUSE SYSTEMS

[OAR Docket #12-738]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions [NEW]
252:627-1-1 [NEW]
252:627-1-2 [NEW]
252:627-1-3 [NEW]
252:627-1-4 [NEW]
252:627-1-5 [NEW]
252:627-1-6 [NEW]
252:627-1-7 [NEW]
Subchapter 3. Operation and Maintenance [NEW]
252:627-3-1 [NEW]
252:627-3-2 [NEW]
252:627-3-3 [NEW]
252:627-3-4 [NEW]
Subchapter 5. Sampling, Record Keeping and Reporting Requirements [NEW]
252:627-5-1 [NEW]
Appendix A. Testing Frequency and Limits for Water Reuse Systems [NEW]

AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S.§ 2-2-201; and 27A O.S.§§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

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n/a

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n/a

ANALYSIS:
The DEQ proposes to establish a new Chapter 627 with standards for the operation and maintenance of systems that take treated wastewater and, with additional treatment, make it into non-potable "reclaimed water" for beneficial

reuse. The new rules create four categories of reclaimed water (Categories 2 through 5). Each category has a different level of treatment and permitted uses. The operating standards for the land application of wastewater from lagoon treatment systems were formerly in Chapters 619 and 621; those provisions have been incorporated into these new rules under Categories 4 and 5 reclaimed water. The new rules define terms and establish permitting, treatment, monitoring and record keeping requirements for reclaimed water suppliers and users. DEQ also proposes to charge annual fees to the suppliers of reclaimed water. The fees will cover DEQ's costs to inspect, track compliance, provide technical assistance for and enforce the new standards.

CONTACT PERSON:

The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1, WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:627-1-1. Purpose and authority

(a) **Purpose.** This Chapter establishes the operating requirements for water reuse systems that are permitted or qualify to be permitted under OAC 252:656.

(b) **Authority.** This Chapter is authorized by 27A O.S. §§ 2-6-101 through 2-6-105, 27A O.S. §§ 2-6-401 through 2-6-403, and 27A O.S. §§ 2-6-501.

(c) **Applicability.** The rules in this Chapter apply to any person or entity that owns, operates and/or has been permitted to construct a water reuse system in accordance with OAC 252:656.

252:627-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*), the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Bypass" means the intentional or unintentional diversion of a waste stream from any portion of a wastewater treatment system or a water reuse system.

"Cell" means an individual basin of a lagoon system.

"DEQ" means the Oklahoma Department of Environmental Quality.

"Discharge" means any intentional or unintentional release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, overflowing, leaching or other means of release of wastewater or reclaimed water into any waters of the state or into or on any location where they may enter waters of the state.

"End-of-pipe" means the terminal points in all reclaimed water users'distribution systems.

"Lagoon" means a soil or lined basin, either below or above ground level, that is designed, maintained and operated to store, recycle and/or treat wastewater.

"Operator" means the individual who is properly certified by DEQ and who is responsible for the maintenance and operation of a water reuse system.

"MOR" means Monthly Operation Report.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity.

"Reclaimed water" means wastewater that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.

"Supplier" means a person or entity that treats and provides reclaimed water pursuant to a permit issued by DEQ.

"Treatment works" means any plant, disposal field, lagoon, incinerator or other facility used to treat, stabilize, hold or reclaim wastewater.

"User" means a person or entity that uses reclaimed water. In those instances in which the supplier and the user are the same entity, the entity is a "supplier" subject to the provisions of this Chapter.

"Water reuse system" means a treatment and distribution system designed to treat and supply reclaimed water.

"Wetted perimeter" means the area where a land application device distributes reclaimed water.

252:627-1-3. Permit requirements

(a) **Requirement for Permit to Construct.** No one shall construct, modify or operate a water reuse system without first obtaining a Permit to Construct pursuant to OAC 252:656.

(b) **Requirement for Permit to Supply.** No one shall supply reclaimed water without first obtaining a Permit to Supply pursuant to this Section.

(c) **Applications for Permits to Supply.** Applications for Permits to Supply Reclaimed Water shall be submitted to DEQ at least six (6) months prior to the anticipated start date for supplying reclaimed water and shall include the following:

(1) a complete and signed application;

(2) the required permit application fee;

(3) a copy of the Permit(s) to Construct the water reuse treatment and distribution system; and

(4) a copy of the binding user agreement between the supplier and each user of the reclaimed water.

(A) Agreements between suppliers and users of Categories 2 through 4 reclaimed water shall contain the following minimum provisions:

(i) A statement that the user shall operate all reclaimed water distribution systems in compliance with all applicable DEQ regulations.

(ii) A statement that the user shall allow the supplier reasonable access to all site(s) to determine whether the user is operating its facilities in compliance with the applicable DEQ regulations, and/or performing all required monitoring and analysis.

(iii) Documentation evidencing the user's legal interest in all locations where reclaimed water is being used.

(B) Category 5 user agreements are subject to the provisions of OAC 252:656-25-2(d).

(d) **Duration.** Permits to Supply are operating permits that expire five (5) years from the date of issuance.
(e) **Renewals for Permits to Supply.** Suppliers shall submit applications to renew existing Permits to Supply at least six (6) months prior to the permit's expiration date.
(f) **Responsibility.** Suppliers shall be responsible for assuring that users operate all reclaimed water distribution sites in compliance with DEQ regulations.

252:627-1-4. Compliance required

Suppliers shall ensure that water reuse systems are operated pursuant to the terms of permits issued by DEQ and this Chapter. When in conflict, the terms of the permit shall supersede the requirements of this Chapter. Suppliers shall immediately stop supplying reclaimed water whenever the reclaimed water does not meet the requirements in Appendix A for chlorine residual, turbidity and/or fecal coliform.

252:627-1-5. General requirements for water reuse systems

(a) **Unauthorized wastes.** Suppliers shall take reasonable measures to prevent the introduction of unauthorized industrial wastewater, hazardous substances, chemicals or wastes into water reuse systems.
(b) **Protection of potable water supplies.** Suppliers shall prevent cross-connections between wastewater, water reuse and potable water supplies.
(c) **Discharges prohibited.** Suppliers shall ensure that all parts of water reuse systems are operated and maintained so that there are no unpermitted bypasses or discharges of wastewater or reclaimed water from the system. All such bypasses and/or discharges shall be considered violations of this Chapter and shall be subject to enforcement as an unpermitted discharge to waters of the state in violation of the Oklahoma Pollutant Discharge Elimination System Act.
(1) **Reporting requirement.** Suppliers shall ensure that any and all bypasses and/or discharges from water reuse systems are reported to DEQ at (800) 522-0206 within 24-hours of an incident and that a completed and signed DEQ Form 605-011 "Self Reporting Wastewater Bypass Form" is submitted to DEQ within five (5) days of the incident.
(2) **Required response.** Suppliers shall ensure that immediate action is taken to stop, contain, clean up and prevent recurrence of bypasses or discharges.
(d) **Certified operator required.** Suppliers shall have at least one certified operator employed at all times for each water reuse system. Operators shall be certified pursuant to OAC 252:710.
(e) **Noncompliance reporting.** Suppliers shall report any chlorine residual, turbidity and/or fecal coliform violations within twenty-four (24) hours from the time suppliers become aware of a violation(s) by calling DEQ at (800) 522-0206. A written report describing the reason for the violation and the steps taken to correct the violation shall be submitted to DEQ within five (5) days of discovery of the violation.
(f) **User inspection program.** A supplier may become approved by DEQ to inspect the supplier's users' storage and distribution systems in lieu of DEQ performing the inspections.
(1) **Applications.** A supplier may become approved by submitting the following to DEQ:
(A) a copy of the binding user agreement(s) between the supplier and all of its users;
(B) a copy of the supplier's proposed inspection form, which shall include:
(i) the date and time of inspection;
(ii) the name of the inspector;
(iii) whether separation distances are met;
(iv) whether all step necessary to prevent bypasses have been taken;
(v) whether there was evidence of ponding of reclaimed water;
(vi) the application rate of reclaimed water, if applicable;
(vii) the type of vegetative cover, if applicable;
(viii) whether the area where reclaimed water is used is secure;
(ix) whether disinfection requirements are being met;
(x) whether flushing plan has been followed; and
(xi) whether the reclaimed water is being used in compliance with the permit.
(C) documentation that the supplier's inspector has completed a DEQ approved water reuse training class;
(2) **Duties.** Once approved, a supplier shall:
(A) perform annual inspections at each of its users' reclaimed water distribution sites. The supplier shall complete and maintain on-site an inspection form for each inspection completed; and
(B) review water reuse regulations with users.
(g) **DEQ's right to inspect.** Nothing in this section shall affect DEQ's statutory right to enter and inspect users' facilities.
(h) **Use of accredited laboratories.** All laboratory analyses required to be conducted pursuant to this Chapter shall be performed by laboratories accredited by DEQ.

252:627-1-6. Permitted uses of reclaimed water

The following are the permitted uses of reclaimed water by category:
(1) **Category 2.** Category 2 reclaimed water shall only be used for the permitted uses in Categories 3, 4 and 5, and:
(A) drip irrigation on orchards or vineyards;
(B) spray or drip irrigation on sod farms, public access landscapes and public use areas/sports complexes, including unrestricted access golf courses;
(C) toilet and urinal flushing;
(D) fire protection systems;
(E) commercial closed-loop air conditioning systems;
(F) vehicle and equipment washing (excluding self-service car washes); and

(G) range cattle watering.

(2) **Category 3.** Category 3 reclaimed water shall only be used for the permitted uses in Categories 4 and 5, and:

(A) subsurface irrigation of orchards or vineyards;

(B) restricted access landscape irrigation;

(C) irrigation of livestock pasture;

(D) concrete mixing;

(E) dust control;

(F) aggregate washing/sieving;

(G) new restricted access golf course irrigation systems;

(H) industrial cooling towers and once-through cooling systems; and

(I) restricted access irrigation of sod farms.

(3) **Category 4.** Category 4 reclaimed water shall only be used for the permitted uses in Category 5 and:

(A) soil compaction and similar construction activities; and

(B) existing restricted golf course irrigation systems utilizing water that has received primary treatment in lagoon systems. Permits to construct shall not be issued for new Category 4 restricted access golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(4) **Category 5.** Category 5 reclaimed water shall only be used for:

(A) restricted access pasture irrigation for range cattle;

(B) restricted access irrigation of fiber, seed, forage and similar crops; and

(C) irrigation of silviculture.

252:627-1-7. Annual fees for water reuse systems

(a) **Fees.** Each water reuse system shall be charged an annual fee. [See 27A O.S. § 2-3-402] The annual fee for suppliers shall be:

(1) Category 2 - $700.00

(2) Category 3 - $400.00

(3) Category 4 - $200.00

(4) Category 5 - $100.00

(5) Water reuse systems will be charged an additional $50.00 per user if the supplier does not have a DEQ approved inspection program.

(b) **Due date.** Suppliers shall submit payment of the fees within thirty (30) days of receipt of invoices mailed by DEQ.

SUBCHAPTER 3. OPERATION AND MAINTENANCE

252:627-3-1. Distribution system

(a) **Maintenance.** Suppliers shall maintain the structural integrity of all parts of the distribution system and maintain it in good working order.

(b) **Connections.** Suppliers shall maintain the integrity of the distribution system by inspecting all connections to the distribution system.

(c) **Erosion control.** Suppliers shall provide erosion protection for all parts of the distribution system located in or near waterways or flood plains.

(d) **Pump stations.** Suppliers shall ensure that pump stations are properly maintained and operated by doing the following:

(1) Securing pump stations to prevent unauthorized access.

(2) Maintaining the pumps in working condition.

(3) Keeping the screens free of debris to prevent clogging.

(4) Maintaining the required alarms in working order.

(5) Maintaining the required back-up generators and/or portable engine driven pumps in working order.

(6) Maintaining a complete set of operational instructions, emergency procedures and maintenance schedules.

(e) **Flushing Plan.** Suppliers shall have and implement comprehensive plans, approved by DEQ, for flushing reclaimed water within storage and distribution systems pursuant to OAC 252:656-27-4(e). Flushing plans shall also be included in the reclaimed water systems' O&M manuals [OAC 252: 656-3-10] and in the suppliers' DEQ approved inspection programs [OAC 252:627-1-5(f)].

252:627-3-2. Requirements for using Category 2 reclaimed water

(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to areas where Category 2 reclaimed water is used:

(1) **Legal access to site.** Suppliers shall have continued legal access to all areas where Category 2 reclaimed water from suppliers' systems is used.

(2) **Equipment maintenance.** Suppliers shall ensure that all distribution and irrigation equipment is maintained in working order.

(b) **Restrictions.** Suppliers shall ensure that Category 2 reclaimed water is not used:

(1) on any food crop that may be consumed raw;

(2) on processed food crops such as corn, wheat and oats, less than thirty (30) days before harvest;

(3) for spray irrigation on orchards or vineyards;

(4) at rates that allow discharge from irrigation sites;

(5) at a rate that exceeds the nitrogen and phosphorus uptake rates for the crop at the site;

(6) at rates that result in phytotoxicity;

(7) during periods of precipitation or while the soil is saturated or frozen;

(8) on land having a slope greater than five percent (5%);

(9) where there are berms or other barriers on a water reuse site that would cause the pooling or ponding of reclaimed water at the site, nor shall any berms or barriers impede the natural flow of stormwater from the site;

(10) on public use areas that have a high potential for skin to ground contact (e.g., football fields, sports complexes, playgrounds, etc.) when in use by the public; and
(11) at any location not authorized by the state in the permit.

252:627-3-3. Requirements for using Categories 3 and 4 reclaimed water

(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to areas where Categories 3 or 4 reclaimed water is used:
(1) **Legal access to site.** Suppliers shall have continued legal access to all areas that are being irrigated with Category 3 or 4 reclaimed water.
(2) **Equipment maintenance.** Suppliers shall ensure that all distribution and irrigation equipment is maintained in working order.

(b) **Restrictions.** Suppliers shall ensure that Category 3 or 4 reclaimed water is not used:
(1) from a lagoon cell that receives raw sewage;
(2) on public use areas that have a high potential for skin to ground contact (e.g., football fields, sports complexes and playgrounds);
(3) on golf courses unless irrigation takes place when the public is not allowed to access the sites;
(4) on any food crop that may be consumed raw;
(5) for spray irrigation on orchards or vineyards;
(6) at rates that allow a discharge from the permitted irrigation site;
(7) within one hundred feet (100') of the permitted boundary of the site;
(8) at a rate that exceeds the nitrogen and phosphorus rates for the crop at the site;
(9) at a rate that results in phytotoxicity;
(10) when the dissolved oxygen concentration for Category 4 reclaimed water is less than 2.0 mg/l;
(11) during periods of precipitation or while the soil is saturated or frozen;
(12) on land having a slope greater than five percent (5%);
(13) where there are berms or other barriers on a water reuse site that would cause the pooling or ponding of reclaimed water at the site, nor shall any berms or barriers impede the natural flow of stormwater from the site;
(14) on public use areas during times of use; and
(15) on sod farms unless a period of 30 (thirty) days has elapsed between the last application of Category 3 reclaimed water and harvesting of sod. [See OAC 252:627-1-6(a)(2)(H)]

252:627-3-4. Requirements for using Category 5 reclaimed water

(a) **Operation and maintenance.** The following operation and maintenance requirements shall apply to areas where Category 5 reclaimed water is used for irrigation:
(1) **Fencing.** Suppliers are responsible for ensuring that any required fencing is maintained in order to prevent unauthorized access to the site.
(2) **Signs.** Suppliers are responsible for ensuring that the required signs, which describe the nature of the facility and advise against trespassing are posted on or near the fence on each side of the water reuse site.
(3) **Legal access and control of site.** Suppliers shall ensure that Category 5 reclaimed water is applied on sites to which suppliers have legal access and control pursuant to the provisions of OAC 252:656-25-2(d).
(4) **Prohibition in public use area.** Category 5 reclaimed water shall not be applied to any public use areas.
(5) **Equipment maintenance.** Suppliers shall ensure that all irrigation equipment is maintained and in working order.

(b) **Restrictions.** Suppliers shall not irrigate with Category 5 reclaimed water:
(1) from a lagoon cell that receives raw sewage;
(2) from any cell other than the one specified in the permit;
(3) on any food crop that may be consumed raw;
(4) on grain crops such as corn, wheat and oats, less than thirty (30) days before harvest;
(5) at rates that allow a discharge from the permitted water reuse site;
(6) within one hundred feet (100') of the permitted boundary of the site;
(7) at a rate that exceeds the nitrogen and phosphorus rates for the crop grown at the site;
(8) at a rate that results in phytotoxicity;
(9) when the reclaimed water has a dissolved oxygen concentration of less than 2.0 mg/l;
(10) during periods of precipitation or while the soil is saturated or frozen;
(11) on land having a slope greater than five percent (5%); and
(12) where there are berms or other barriers on a water reuse site that would cause the pooling or ponding of reclaimed water at the water reuse site, nor shall any berms or barriers impede the natural flow of stormwater from the site.

SUBCHAPTER 5. SAMPLING, RECORD KEEPING AND REPORTING REQUIREMENTS

252:627-5-1. Sampling, reporting and record keeping requirements

(a) **Sampling.** Suppliers shall comply with the sampling requirements in Appendix A.

(b) **Completing MORs.** Suppliers shall complete DEQ Form 627-001 "Water Reuse System Monthly Operation Report" ("MOR") for each month. The MOR shall contain the following information:
(1) The estimated volume of reclaimed water produced and distributed to each end user;
(2) The results of each sampling event and:

(A) the name of the person taking each sample,
(B) the date and time of sampling,
(C) the date and time the analysis began, and
(D) the name of the laboratory doing the analysis.

(3) The weather conditions during the reuse period;

(4) The type of crop, grass or vegetation irrigated with the reclaimed water, if applicable; and

(5) The loading rates at each water reuse site to verify that agronomic rates are not being exceeded.

(c) **Submission of MORs.** Categories 2 and 4 reclaimed water suppliers shall submit MORs to DEQ by the fifteenth (15th) day of the following month.

(d) **Retention of MORs.** All suppliers of reclaimed water shall maintain MORs on-site for three (3) years and make them available to DEQ upon request

(e) **Record keeping.** Suppliers shall keep all records, including all maintenance records, on site for at least three (3) years and available for review by DEQ upon request.

(f) **Additional reporting, records and/or sampling.** Additional sampling, reporting, and/or records requirements may be included by DEQ in any permit, authorization, order, consent decree, closure plan, remediation plan, or other official document issued by DEQ pursuant to applicable law and the provisions of this Chapter.

APPENDIX A. TESTING FREQUENCY AND LIMITS FOR WATER REUSE SYSTEMS [NEW]

Category	Testing Frequency	Limits	MORs
1	Reserved	Reserved	Reserved
2	Turbidity: Continuous	Turbidity shall not exceed the following: • Daily average 2 NTU[1] • 5 NTU >5% of the daily maximum per month[2] • 10 NTU at any time	Supplier Submit MORs to DEQ
	Chlorine disinfection at POE: Continuous	(1) Free available chlorine residual shall always be ≥ 1.0 ppm at POE to distribution system and following any subsequent storage or treatment **OR** The chlorine residual at the POE to the distribution system and following any subsequent storage or treatment shall be at a level to prevent growth of slime and regrowth of pathogens in the distribution and storage systems as determined by an approved chlorine decay rate model pursuant to OAC 252:656-3-4 (b)(7)(C) **AND** (2) Free available chlorine residual at the end-of-pipe shall always be ≥ 0.20 mg/l **OR** Combined chlorine residual at the end-of-pipe shall always be ≥ 0.50 mg/l	
	Chlorine disinfection at end-of-pipe: Daily		
	Fecal Coliform: Daily	Fecal Coliform: No detectable fecal coliform organisms in four of the last seven daily samples, single sample maximum ≤ 23 cfu/100 ml	
	Nitrogen/Phosphorous: Monthly	≤ most stringent agronomic rate	
	CBOD5: Weekly	< 5.0 mg/l	
3	Chlorine disinfection: Every 12 hours	Free available chlorine residual at the POE to the distribution system and following any subsequent storage or treatment shall always be ≥ 0.20 ppm **OR** Combined chlorine residual at the POE to the distribution system and following any subsequent storage or treatment shall always be ≥ 0.50 mg/l	Supplier Maintain MORs On Site
	Fecal coliform: 3 per week	• Monthly geometric mean of < 200 cfu/100 ml • Single sample maximum < 400 cfu/100 ml	
	Nitrogen/Phosphorous: Monthly	≤ most stringent agronomic rate	
	BOD5 or CBOD5: Weekly	< 20 mg/l	
4	Fecal coliform: Weekly	• Monthly geometric mean of < 200 cfu/100 ml • Single sample maximum < 800 cfu/100 ml	Supplier Submit MORs to DEQ
	Chlorine disinfection: Daily	Free available chlorine residual at the POE to the distribution system and following any subsequent storage or treatment shall always be ≥ 0.20 ppm **OR** Combined chlorine residual at the POE to the distribution system and following any subsequent storage or treatment shall always be ≥ 0.50 mg/l	
	Dissolved oxygen: Weekly	>2.0 mg/l	
5	None		Supplier Maintain MORs On Site

[0] The daily mean operating filter effluent turbidity (continuously monitored) is calculated as the average of turbidity measures at ≤ 1.2 hour intervals over 24 hours, and must be reported monthly.

[0] The maximum 24 hour turbidity must be based on highest measure from continuous monitoring taken at ≤ 1.2 hour intervals over 24 hours.

[OAR Docket #12-738; filed 5-25-12]

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

[OAR Docket #12-656]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:631-1-3 [AMENDED]
Subchapter 3. Operations
252:631-3-3 [AMENDED]
252:631-3-11 [AMENDED]
AUTHORITY:
Environmental Quality Board, 27A O.S. § 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; 27A O.S.§ 2-3-402 and 27A O.S.§§ 2-6-103, 2-6-303, 2-6-304 and 2-6-501.
DATES:
Comment period:
December 1, 2011, through December 31, 2011
Public hearing:
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March 5, 2012
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Final adoption:
May 2, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
Incorporated standards as published on July 1, 2011:
40 CFR Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," except for the following:
(A) 40 CFR §§ 141.400 - 141.405;
(B) 40 CFR §§ 141.600 - 141.605;
(C) 40 CFR §§ 141.620 - 141.629; and
(D) 40 CFR §§ 141.700 - 141.723.
Incorporating rules:
OAC 252:631-1-3
ANALYSIS:
The DEQ proposes to amend OAC 252:631 as follows: (1) to modify the annual fee schedule for public water supply systems; (2) to update its rules concerning the date of the incorporation by reference of certain federal regulations from July 1, 2010, to July 1, 2011; (3) to require a minimum level of disinfection for systems with mandatory disinfection; (4) to establish an alternate minimum free chlorine residual at the point of entry to the distribution system for PWSs that maintain a minimum required log-inactivation of pathogens; (5) to clarify that purchase water systems must meet minimum disinfection standards; (6) to clarify which systems are required to submit the monthly operational report to DEQ; and (7) to replace "standard plate count" as one of the required analysis with "heterotrophic bacteria" when chloramines are used or proposed to be used as the method of disinfection in a distribution system.
CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. INTRODUCTION

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2010~~ 2011, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference, except for the following:

(1) 40 CFR §§ 141.400 - 141.405;
(2) 40 CFR §§ 141.600 - 141.605;
(3) 40 CFR §§ 141.620 - 141.629; and
(4) 40 CFR §§ 141.700 - 141.723.

SUBCHAPTER 3. OPERATIONS

252:631-3-3. Disinfection requirements

(a) **Mandatory disinfection.** Full-time disinfection is mandatory for:

(1) surface water, groundwater under the direct influence of surface water, and spring water supplies unless an alternative has been approved by the DEQ. Each of these systems shall provide disinfection in accordance with 40 CFR Section 141.72(b) and meet the monitoring requirements contained in 40 CFR Section 141.74(c).

(2) groundwater supplies or purchase water systems whenever ~~the~~ their record of bacteriological tests show:

(A) a persistent presence of Total Coliform; or

(B) a verified Fecal Coliform, or E. Coli MCL exceedance;

(3) PWS systems that purchase water from a public water supply under mandatory disinfection, unless the purchase water system verifies chlorine residuals that are in compliance with (c) or, if chloramines are used, (d) of this Section; and

(~~3~~ 4) any new well in a system where the initial bacteriological tests of the well do not show a safe record with the DEQ for two (2) consecutive days after completion and testing of the well.

(b) **Level of disinfection.** The disinfection method shall be sufficient to ensure that, at the point of entry into the distribution system, the total treatment processes of the system achieve:

(1) at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts; and

(2) at least 99.99 percent (4-log) inactivation and/or removal of viruses;

(~~b~~ c) **Modification of disinfection methods.** When any change in the disinfection process is contemplated, contact the DEQ. Submittal of an application, including plans, specifications, engineering reports, disinfection profile and disinfection benchmark justifying such a change may be required in order to obtain approval from the DEQ.

(~~c~~ d) **Chlorine.** The minimum free chlorine residuals shall be as follows:

(1) **Most distant points.** The minimum free chlorine residual at the most distant points in a water distribution system must be 0.2 mg/l.

(2) **Point of entry.** ~~Free~~ The minimum free chlorine ~~residuals~~ residual at the POE ~~must~~ shall be ~~at least~~ 1.0 ~~milligram per liter~~ mg/l ~~at the POE~~. For supplies that document they meet or exceed the inactivation requirements in OAC 252:631-3-3(a)(1), the minimum free chlorine residual at the POE shall be 0.2 mg/l. ~~Higher residuals may be required depending on pH, temperature and other characteristics of the water.~~

(~~d~~ e) **Chloramines.**

(1) **Prior public notice.** Systems must notify all users of kidney dialysis machines at least one month before introducing chloramines into the distribution system or starting chloramination.

(2) **Chloramines engineering study.** Before changing to chloramines as the residual disinfectant in the distribution system, the system must conduct and submit to the DEQ for approval an engineering study and weekly analyses for at least six (6) weeks prior to and quarterly for one year following such a change of disinfectant. The engineering study and analysis must address the following:

(A) Select at least four (4) sample points for each treatment plant used by the system. At least twenty-five percent (25%) of the sample points must be at locations within the distribution system reflecting the maximum residence time of water in the system; and

(B) Collect samples from the selected points weekly for six (6) weeks and perform the following analyses before modification of treatment is initiated:

(i) Total coliform;

(ii) Fecal coliform;

(iii) Enterococcus subgroup of the fecal streptococcus group of bacteria; and

(iv) Standard plate counts at 35EC ~~and 20EC~~.

(3) **Continuing testing.** After modification of the treatment process, perform the bacteriological tests for samples collected at each of the selected points at quarterly intervals for one year, and then annually, when samples are collected for total trihalomethane determination. Submit the results to the DEQ.

(4) **Primary Disinfection.** A disinfectant must be added to provide the required log inactivation of *Giardia Lamblia* cysts before ammonia is added.

(5) **Total chlorine.** The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l and at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(~~e~~ f) **Other disinfectants.** Iodine or bromine compounds must not be used as a disinfectant. Ozone or ultraviolet light may be used for in-plant treatment or disinfection provided an approved residual disinfectant is added prior to distribution and maintained according to this chapter. Chlorine dioxide may be used as long as the requirements in this chapter are met.

(~~f~~ g) **Process control tests for disinfectants.** Control tests must be performed by all systems that disinfect in accordance with procedures approved by the DEQ. Sampling points must be changed regularly so that the system is sampled completely at least once each week.

(1) **Chlorine.** Systems that use chlorine must test for free chlorine and total chlorine residual twice a day in the distribution system.

(2) **Chloramines.**

(A) Systems that use chloramines must test for total chlorine residual twice a day in the distribution system.

(B) Systems that use chloramines must submit yearly standard plate count and enterococcus samples from the distribution system in order to document that no microbiological regrowth is occurring in the distribution system.

(C) The minimum total chlorine residual at the most distant points in a water distribution system must be 1.0 mg/l.

(D) Total chlorine residuals must be at least 2.0 mg/l at the POE. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

(3) **Other disinfectants.**

(A) Systems that use chlorine dioxide, ozone or ultraviolet light must maintain a free chlorine residual, or total chlorine residual, where chloramines are used, in accordance with OAC 252:631-3-3(a) and (b).

(B) Systems that use ozone or chlorine dioxide must perform process control tests in accordance with 40 CFR Section 141.132.

252:631-3-11. Operating records & reports

(a) **Immediate notification to DEQ.** Each system must report to the DEQ by the end of the next business day if any of the following occur:

(1) Waterborne disease outbreak;

(2) Finished water turbidity exceeds one (1) NTU;

(3) Chlorine residual falls below 0.2 mg/l at the POE and whether the residual was restored to at least 0.2 mg/l within four (4) hours;

(4) Nitrate level exceeds 10 mg/l;

(5) Verification of a positive Fecal Coliform or E. Coli sample; and

(6) Exceedance of the Chlorine Dioxide MRDL.

(b) **Records.** All systems must keep a daily record of the results of required process control tests and list the results of microbiological checks on the dates sampled. The records of all laboratory checks and control tests must indicate when, where, and by whom the tests were made. The PWS system must complete and submit the original of the DEQ-approved monthly operational report form to the DEQ with a copy to the appropriate local DEQ representative no later than the tenth (10th) day of the following month.

(c) **Water treatment systems.**

(1) Systems that provide water treatment must keep:

(A) a daily record of the operations performed in the treatment process;

(B) observations, cost and occurrences related to the operation of the plant; and

(C) the control tests and laboratory checks previously described in OAC 252:631-3-10.

(2) In addition, water treatment plants designed for turbidity and microbial removal must keep:

(A) the number of filtered water turbidity samples taken during the month;

(B) the number and percentage of turbidity samples that are less than or equal to the standards; and

(C) the date and value of any turbidity measurements that exceed one (1) and five (5) NTU. Where continuous monitoring is used, measurements must be recorded every four (4) hours during plant operation.

(d) **Groundwater systems.** Operators of groundwater systems must keep a daily record of all well operations, in addition to the process control tests and laboratory checks required for ground water supplies. ~~Community and NTNC systems must submit monthly operational reports to DEQ.~~

(e) **Purchase water systems.** Operators of ~~community~~ systems that purchase water as their sole source and provide supplemental chlorination must submit a monthly operational report to the DEQ of the operation of the system, in addition to required laboratory checks. Monthly reports are not required from purchase water systems that do not add a disinfectant.

(f) **Record keeping.** All records must be available for inspection by the DEQ and maintained for at least ten (10) years unless otherwise specified.

[OAR Docket #12-656; filed 5-21-12]

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

[OAR Docket #12-657]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
252:641-1-2. [AMENDED]
252:641-1-3. [AMENDED]
Subchapter 3. Soil Tests
252:641-3-2. [AMENDED]
252:641-3-4. [AMENDED]
Subchapter 9. Pump Tanks
252:641-9-2. [AMENDED]
Subchapter 10. Aerobic Treatment Systems
252:641-10-2. [AMENDED]
252:641-10-3. [AMENDED]
Subchapter 15. Lagoons
252:641-15-3. [AMENDED]
Appendix C. Pipe Specifications For On-Site Sewage Treatment Systems [REVOKED]
Appendix C. Pipe Specifications For On-Site Sewage Treatment Systems [NEW]

AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101, 2-2-201 and 2-6-402; and 59 O.S. § 1158.

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ANALYSIS:
The DEQ proposes to amend OAC 252:641 as follows: (1) to establish water body protection areas for siting and designing on-site sewage treatment systems; (2) to require nitrogen reduction systems to be installed prior to dispersal for any on-site sewage treatment systems located within Zone 1 of a water body protection area; (3) to prohibit any system installed within Zone 2 of a water body protection area from being designed using a soil percolation

test; and (4) to require purple pipe for any pressurized piping conveying treated wastewater for reuse. Additionally, the DEQ proposes other non-substantive changes to clarify existing language.

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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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

252:641-1-2. Definitions

In addition to the definitions contained in the Environmental Quality Code (27A O.S. § 2-1-101 *et seq.*), the following words, terms and acronyms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Aerobic treatment unit" means a ~~covered receptacle designed to receive, store, and provide aerobic treatment, which is the digestion of organic matter using forced air to produce a clarified liquid, to sewage prior to dispersal~~ treatment unit that provides digestion of organic matter through oxidation and has been tested and certified by an ANSI accredited certifier as meeting the most current ANSI/NSF Standard 40, whether or not it includes nitrogen reduction.

"Alternative system" means an on-site sewage treatment system that varies from the requirements of on-site sewage treatment systems described in this Chapter.

"ANSI" means the American National Standards Institute.

"ASTM" means the American Society for Testing and Materials.

"Certified installer" means a person in the business of installing or constructing on-site sewage treatment systems who has been certified by the DEQ to inspect and approve his/her own installations.

"Certified soil profiler" means a person who has been certified by the DEQ to perform soil profile descriptions to be used to design on-site sewage treatment systems.

"Chamber" means a molded rigid plastic, arch shaped, hollow structure with an open bottom area and sidewalls that are designed to allow effluent to flow into the surrounding soil while preventing soil from migrating into the chamber.

"Conventional subsurface absorption field" means a gravity-fed subsurface dispersal field, which may be preceded by a lift station, that provides treatment through soil absorption in media-filled (e.g., gravel, polystyrene, chamber, etc.) trenches. This does not include ET/A or shallow extended dispersal fields.

"CSA" means the Canadian Standards Association.

"DEQ" means the Department of Environmental Quality.

"Designer" means the person who conducts the soil test and/or completes the DEQ Form 641-581P or 641-581SP for submission to the DEQ.

"Dispersal site" means the ten-thousand-square-foot (10,000 ft^2) rectangular area that contains the test holes used to design the dispersal field.

"Distribution structure" means a watertight concrete or plastic compartment, box, or solid piping that allows the distribution of sewage at the same elevation throughout the subsurface treatment field.

"Drip irrigation" means the use of pressure to distribute aerobically treated effluent to a subsurface dispersal field using small diameter tubing equipped with pressure compensating emitters.

"Evapotranspiration/absorption (ET/A)" means the subsurface dispersal of sewage for treatment through evaporation, transpiration and absorption.

"Flow equalization tank" means a storage reservoir that contains an automatically controlled pump that is capable of delivering sewage to an on-site sewage treatment system at a specific hourly rate.

"IAPMO" means the International Association of Plumbing and Mechanical Officials.

"Individual on-site sewage treatment system" means an on-site sewage treatment system that treats sewage from one individual residence or a duplex with one owner.

"Installer" means any person who installs an on-site sewage treatment system or who is in the business of contracting to install or furnishing labor to install on-site sewage treatment systems.

"Level" means within a four-inch range of the same elevation.

"Lift station" means a short-term storage reservoir, containing an automatically controlled pump, that pumps sewage to a higher elevation for treatment.

"Low pressure dosing" means the use of pressure to distribute effluent evenly throughout the dispersal field through small diameter perforated piping.

"Major earth fill area" means any area where soil has been added to change the elevation from the original ground level by more than one (1) foot.

"Modification" means the expansion or relocation of any part of an existing on-site sewage treatment system, which does not fall under the definition of new installation.

"New installation" means the installation of a new on-site sewage treatment system. This includes the replacement of an existing lagoon, aerobic treatment unit and/or dispersal field, even when the existing septic tank is not replaced.

"NSF" means the National Sanitation Foundation.

"On-site sewage treatment system" means an individual or small public on-site sewage treatment system as defined in this Chapter.

"Redoximorphic soil features" means soil that, due to wetness, contains features that exhibit a color of less than or equal to two (2) chroma and greater than or equal to four (4) value in concentrations greater than five percent (5%) in two (2) consecutive intervals.

"Repair" means the repair of any part of an existing on-site sewage treatment system or the replacement of any part of an existing on-site sewage treatment system as long as the replacement part is placed in the exact same location that the original part had been located. Repair does not include excavation and replacement of a subsurface absorption trench.

"Retention structure" is a sealed concrete or plastic structure that retains sewage until it reaches a depth of ten inches (10") and then allows it to flow to another trench.

"Rock fragments" means unattached pieces of rock two millimeters (2 mm) in diameter or larger that are resistant to rupture (strongly cemented or extremely hard).

"Scenic river corridor" means the two-mile wide area surrounding each scenic river as designated in 82 O.S. § 1452, with the center of each scenic river being the center of the corridor.

"Sewage" means wastewater that generally originates as human waste from certain activities including using toilet facilities, washing, bathing, preparing foods and washing laundry, excluding industrial wastewater.

"Small public on-site sewage treatment system" means an on-site sewage treatment system, except one that serves an individual residence or duplex, that has an average daily flow of five thousand (5,000) gallons or less.

"Soil profile description" means the identification and characterization of soil at a specific site.

"Soil texture" means the percent by weight of sand, silt, and clay for particles smaller than two millimeters (2 mm) in diameter.

"Storage media" means a natural or manufactured material that provides void spaces for storage and dispersal of effluent in the trenches of a subsurface treatment system.

"Water body" means any reservoir or stream listed in either the most current "Lakes of Oklahoma" or "Water Quality in Oklahoma Integrated Report."

"Water body protection area" means the land area around a water body comprised of Zone 1 and Zone 2.

"Water saturated soil" means soil characterized by either the presence of groundwater or redoximorphic soil features.

"Zone 1" means the land within six hundred sixty feet (660') of the highest normal pool elevation established for a reservoir or within six hundred sixty feet (660') of a stream bed.

"Zone 2" means the land within one thousand three hundred twenty feet (1320') of the highest normal pool elevation established for a reservoir or within one thousand three hundred twenty feet (1320') of a stream bed.

252:641-1-3. General requirements for on-site sewage treatment systems

(a) **Inspections.** All new installations of, modifications to and/or repairs to on-site sewage treatment systems shall be inspected and approved by the DEQ, or installed, self-inspected and approved by a certified installer before new installations, modifications or repairs can be backfilled and/or before the system may be placed into operation. The installer shall be responsible for requesting any required DEQ inspections.

(b) **Treatment.** On-site sewage treatment systems shall only be used for treatment of sewage, as defined in 252:641-1-2. All sewage must be treated and dispersed according to the rules in this Chapter.

(c) **Ownership.** An on-site sewage treatment system shall be located only where:

(1) all components of the on-site sewage treatment system, which includes tanks, pumps, dispersal fields and collection line(s), are or will be located on property that is:

(A) owned by the owner of the on-site sewage treatment system; and/or

(B) dedicated in a recorded easement for the installation and operation of the on-site sewage system to the owner of the on-site sewage treatment system; or

(2) all components of an on-site sewage treatment system, excluding service lines, are or will be located on property that is:

(A) owned by a municipality, rural water district, rural sewer district or federally recognized tribe; and/or

(B) dedicated to a municipality, rural water district, rural sewer district or federally recognized tribe in a recorded easement for the installation and operation of the on-site sewage system.

(d) **Minimum lot size.** The designer and installer shall comply with the minimum lot size requirements as set forth in Appendix A, Figure 3. Plats recorded before January 1, 1974, are not subject to minimum lot size requirements but systems built in those platted areas must meet the construction requirements of this Chapter.

(e) **Requirement for a dispersal field or lagoon.** All on-site sewage treatment systems shall utilize one of the dispersal fields described in Subchapter 12 or a lagoon described in Subchapter 15.

(f) **Average daily flow.**

(1) Individual on-site sewage treatment systems. The average daily flow for an individual on-site sewage treatment system shall be based on an average water usage of two hundred (200) gallons per day for a residence of two (2) bedrooms or less, with an additional sixty-six (66) gallons per day for each additional bedroom.

(2) **Small public on-site sewage treatment systems.** The average daily flow for small public on-site sewage treatment systems shall be calculated using the estimated average daily flows listed in Appendix F, unless actual flow data or a more accurate estimation method is available or there is seasonal flow variation. When there is seasonal flow variation, the average daily flow shall be calculated using the highest monthly flow in the previous twelve (12) months divided by the number of days in that month.

(g) **Sizing.** All dispersal fields and lagoons shall be sized based on average daily flow using the charts in Appendix H. The size of on-site sewage treatment systems should be increased if the actual or anticipated water usage exceeds the above-stated average.

(h) **Separation distances.** The designer and the installer shall comply with the required vertical separation distances

in Appendix A, Figures 1 and 2, and the horizontal separation distances listed in Appendix E.

(i) **Pipe specifications.** All pipe used in on-site sewage treatment systems shall meet or exceed the minimum specifications listed in Appendix C.

(j) **Water body restrictions.** No dispersal field may be installed within Zone 1 of a water body protection area unless it is preceded by a nitrogen reduction system that has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 245.

SUBCHAPTER 3. SOIL TESTS

252:641-3-2. Percolation test method

(a) **Use of percolation tests.** A percolation test may only be used to identify dispersal sites for conventional subsurface absorption fields. ~~Starting January 1, 2009, percolation~~Percolation tests, including pre-existing ones, may not be used to identify dispersal sites for on-site sewage systems:

(1) in scenic river corridors, unless documentation that the site is not located within the scenic river watershed is provided to DEQ~~.~~; and

(2) in Zone 2 of a water body protection area.

(b) **Test hole requirements.** The following test hole requirements shall be met for percolation tests:

(1) **Configuration.** Three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft^2), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft^2). Additional test holes shall not be placed within fifty feet (50') of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations.

(2) **Size.** Test holes shall be dug or bored, four to twelve inches (4"-12") in diameter with vertical sides to a depth of at least twenty-four inches (24") and no more than thirty-six inches (36"). All test holes in the proposed dispersal site shall be the same depth. Test holes shallower than twenty-four inches (24") may be used to design conventional subsurface absorption fields under the alternative system approval process.

(3) **Soil surfaces.** The bottoms and sides of the test holes shall be scratched with a sharp-pointed instrument to relieve any smeared soil surfaces. Loose material shall be removed from the hole prior to commencing the presoak.

(4) **Prohibitions.** Test holes dug through animal burrows, root channels or soil that is cracked due to dry weather conditions shall not be used.

(c) **Presoak period.** The presoak period shall commence no earlier than twenty-four (24) hours prior to the start of the percolation test procedure. Each test hole shall be presoaked by filling them with water and refilling them as necessary to maintain a water depth of at least twelve inches (12") for at least four (4) hours. When it is impossible to maintain a water depth of at least twelve inches (12") during the entire presoak period due to an excessive percolation rate, then the hole is deemed unacceptable and may not be:

(1) used to calculate the percolation rate for the dispersal site; and

(2) located in the dispersal site for a conventional subsurface absorption field.

(d) **Calculating the percolation rate for each hole.** At the completion of the presoak, the depth of the water shall be adjusted to ten inches (10") above the bottom of each test hole. A fixed reference point shall be established at or above the initial water level. Using the fixed reference point, the level of the water in each hole shall be measured and recorded. After seventy-five (75) minutes, the number of inches the water level has dropped in each hole shall be measured and recorded. To calculate the percolation rate for each individual hole, divide seventy-five (75) minutes by the number of inches the water level has dropped. Any hole that exhibits a percolation rate of greater than seventy-five (75) minutes per inch is deemed unacceptable and may not be:

(1) used to calculate the percolation rate for the dispersal site; and

(2) located in the dispersal site for a conventional subsurface absorption field.

(e) **Calculating the percolation rate for the dispersal site.** If the rates of any two (2) test holes in the proposed dispersal site vary by more than fifteen (15) minutes, the percolation rate for the dispersal site shall be considered the rate of the slowest test hole. Otherwise, the percolation rate for the dispersal site shall be determined by averaging the percolation rates for the three (3) test holes and then rounding the result to the nearest whole number. If there are more than three (3) test holes in the proposed dispersal site, then the percolation rate must be calculated using the three (3) slowest percolation rates.

(f) **Sizing the dispersal field.** The percolation rate for the dispersal site shall be used in conjunction with the charts in Appendix H, Figures 1 and 4 to size the conventional subsurface absorption field. The chart in Appendix H, Figure 2 may be used to size conventional subsurface absorption fields utilizing chambers when designed using a percolation test.

(g) **Information to be reported.** The following information must be reported to the DEQ on DEQ Form 641-581P, "Report for On-Site Sewage Treatment" or in a format approved by the DEQ:

(1) Property owner's name(s);

(2) Address or finding directions for property;

(3) Legal description of property, including lot and block number when available;

(4) Lot size in square feet or acres;

(5) Whether the system will be an individual or small public on-site sewage treatment system;

(6) The estimated or actual average daily flow for the system as certified on DEQ Form 641-581Cert "Certification Documentation Form";

(7) Whether the water supply for the property is public or private;

(8) The location of each test hole (identified from two fixed reference points);
(9) The depth and percolation rate, along with the depth to groundwater if encountered, for all test holes in the proposed dispersal field;
(10) The percolation rate for the dispersal site;
(11) The size of the septic tank, the minimum length of the conventional subsurface absorption field, and the minimum and maximum depth of the trenches;
(12) The name and signature of the person performing the pre-soak;
(13) The name, signature and registration number of the person conducting the percolation test; and
(14) The date the percolation test was conducted.

252:641-3-4. Soil profile description test method

(a) **Test hole requirements.** Test holes may be augered borings, continuous core borings, or excavated pits.

(1) **Borings.** If borings are used, three test holes shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft^2), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft^2). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Borings shall allow for the classification of the soil in six-inch intervals and shall be bored to a minimum depth of forty-eight inches (48") or until one of the following is encountered first:

(A) a layer that is impervious to boring;
(B) a six-inch interval classified as a Group 5 soil; or
(C) water saturated soil.

(2) **Pits.** If excavated pits are used, three (3) pits shall be placed in the proposed dispersal site at the approximate corners of an isosceles triangle having two (2) sides fifty feet (50') long and one side seventy-five feet (75') long. If the dispersal field will cover an area larger than ten thousand square feet (10,000 ft^2), then one additional test hole shall be used for each additional five thousand square feet (5,000 ft^2). Additional test holes shall not be placed within fifty feet of any other test hole and shall be located between fifty to seventy-five feet (50'-75') from one of the other test holes. The DEQ may approve or require alternative configurations. Pits shall:

(A) have a depth of a minimum of forty-eight inches (48"), unless rock or water saturated soil is encountered at a shallower depth;
(B) be a minimum of thirty-six inches (36") wide and sixty inches (60") long; and
(C) have one end sloped or stepped to allow for entry.

(b) **Identification of limiting layers.** The shallowest limiting layer encountered in the test holes shall be the limiting layer for the entire dispersal site. The following are considered limiting layers and shall be identified by depth on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment:"

(1) a layer that is impervious to boring;
(2) a six-inch interval classified as a Group 5 soil; and
(3) water saturated soil.

(c) **Verifying limiting layers using pits.** Limiting layers may be verified using an excavated pit. The results of the pit(s) shall override the results of borings completed in the same proposed dispersal site.

(d) **Classifying soil intervals.** For each test hole, the soil group for each six-inch interval between the surface and the bottom of the test hole shall be identified using the guidelines found in the "DEQ/OSU Soil Classification Manual" and classified as one of the soil groups in Appendix B.

(e) **Determining the soil group for the separation range.** The soil group for the separation range establishes the required vertical separation between the dispersed effluent and the limiting layer. The separation range consists of the three (3) six-inch intervals above the interval containing a limiting layer or, if no limiting layer was identified, the separation range shall be the three (3) six-inch intervals above the bottom of the test hole. To determine the soil group for the separation range:

(1) Select the test hole in the dispersal site with the lowest clay content in the separation range; and
(2) Identify and record the most prevalent soil group in the separation range for that test hole.

(f) **Identifying dispersal field options.** Based on the soil group identified in (e) of this Section, use Appendix A, Figure 1 to identify suitable dispersal fields along with their minimum separations distances from the limiting layer.

(g) **Sizing the dispersal field(s).** Each suitable dispersal field shall be sized as follows:

(1) **Determining sizing range.** Select the test hole in the dispersal site with the highest clay content in the sizing range for the chosen dispersal field. The applicable sizing range for each type of dispersal field is as follows:

(A) **Conventional subsurface absorption fields.** The sizing range for conventional subsurface absorption fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
(B) **Low pressure dosing fields.** The sizing range for low pressure dosing fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
(C) **ET/A fields.** The sizing range for ET/A fields is the three (3) six-inch intervals between twelve inches (12") and thirty inches (30").
(D) **Shallow extended subsurface absorption fields.** The sizing range for shallow extended subsurface absorption fields is the three (3) six-inch intervals between six inches (6") and twenty-four inches (24").
(E) **Drip irrigation fields.** The sizing range for drip irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").
(F) **Spray irrigation fields.** The sizing range for spray irrigation fields is the three (3) six-inch intervals between ground level and eighteen inches (18").

(2) **Identifying soil group in sizing range.** Determine the most prevalent soil group in the sizing range for the test hole selected in (1) of this subsection;

(3) **Sizing dispersal field.** Based on the soil group identified in (2) of this subsection, size the dispersal field using the charts in Appendix H, Figures 3 and 5-22; and

(4) **Sizing additional dispersal field options.** Repeat (1) through (3) of this subsection for each dispersal field option.

(h) **Information to be reported.** The following information must be reported to DEQ on DEQ Form 641-581SP, "Report for On-Site Sewage Treatment":

(1) Property owner's name(s);

(2) Address or finding directions for property;

(3) Legal description of property including block and lot number when available;

(4) Lot size in square feet or acres;

(5) Whether the system will be an individual or small public on-site sewage treatment system;

(6) The estimated or actual average daily flow for the system as certified on DEQ Form 641-581 Cert "Certification Documentation Form";

(7) Whether the water supply for the property is public or private;

(8) The location of each test hole (identified from two fixed reference points);

(9) The soil group for each six-inch interval between ground level and the bottom of each test hole in the proposed dispersal field;

(10) The depth and description of any soil impervious to boring or water saturated soil layer in each test hole located in the proposed dispersal field;

(11) Depth of limiting layer for entire dispersal field;

(12) The test hole number used to identify the separation range and the soil group of the separation range in the proposed dispersal field;

(13) For each suitable dispersal fields or system(s) identified provide the following:

(A) the test hole number used to determine the sizing range;

(B) the soil group of the sizing range; and

(C) the minimum sizing and installation criteria for the dispersal field or system;

(14) The name, signature and registration number of the person conducting the soil profile description;~~ and~~

(15) The date the soil profile description was conducted~~.~~; and

(16) Check box indicating whether or not dispersal field will be located in Zone 1 of a water body protection area.

SUBCHAPTER 9. PUMP TANKS

252:641-9-2. Sizing

Pump tanks shall be sized as follows:

(1) **Lift stations.** The lift station pump tank shall have a minimum liquid storage capacity of one thousand (1,000) gallons.

(A) **Daily flow over 500 gallons.** For systems with average daily flows over five hundred (500) gallons, the liquid capacity of the pump tank shall be at least twice the highest daily flow.

(B) **Daily flow over 2,000 gallons.** For systems with an average daily flow over two thousand (2,000) gallons, the liquid capacity of the pump tank may be reduced to one-half (1/2) of the average daily flow, if a backup pump is available on site.

(2) **Flow equalization tanks.** The flow equalization pump tank shall have a minimum liquid storage capacity of one thousand (1,000) gallons. If the daily flow is greater than five hundred (500) gallons, the liquid capacity of the pump tank shall be at least twice the highest daily flow.

(3) **Low pressure dosing tanks.** The low pressure dosing pump tank shall be sized to have a minimum liquid capacity of at least one and one-half (1-1/2) times the average daily flow.

SUBCHAPTER 10. AEROBIC TREATMENT SYSTEMS

252:641-10-2. Design and installation

(a) **Fluctuating flows.** If the daily flow fluctuates so that the flow on any given day during the week exceeds the aerobic treatment unit's daily capacity, then an aerobic treatment system may not be used unless a flow equalization tank, which meets the requirements of 252:641-9, is installed between the trash tank and the aerobic treatment unit.

(b) **Components of aerobic treatment systems.** Aerobic treatment systems shall be comprised of the following components:

(1) **Trash tank.** There shall be a trash tank that meets the requirements of ANSI/NSF Standard 40 or 252:641-7-2. The trash tank shall:

(A) be constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank;

(B) have a minimum liquid capacity of three hundred (300) gallons or the average daily flow, whichever is greater, except that the minimum liquid capacity shall not be less than what was used in the ANSI/NSF certification process;

(C) have a removable lid or a manhole opening of ~~at least twenty inches (20") in diameter or, if rectangular, having no side less than twenty inches (20") in length~~ sufficient size to allow for maintenance. The lid or manhole shall be sealed to prevent leakage and extend a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal; and

(D) have baffles installed at its inlet and the outlet. The baffles shall extend to within two inches (2") of the top of the trash tank.

(i) **Inlet.** Inlet baffles shall extend at least six inches (6") below the liquid depth of the trash tank.

(ii) **Outlet.** Outlet baffles shall extend below the liquid level by twenty percent (20%) to forty percent (40%) of the liquid depth.

(2) **Aerobic treatment unit.** There shall be a aerobic treatment unit that:

(A) has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 40 and when required by waterbody restrictions ANSI/NSF Standard 245;

(B) is constructed to prevent sewage from leaking out of the tank and to prevent the infiltration of water into the tank

(C) is rated at or above the design daily flow;

(D) produces effluent clear enough that the bottom of the pump tank is visible when it is full; and

(E) has an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(3) **Method of disinfection.** If spray irrigation is used as the type of dispersal, then there shall be a method to disinfect the effluent~~, either a liquid chlorinator or a method that is ANSI/NSF Standard 46 approved~~ that has been tested and certified by an ANSI accredited third party certifier as meeting the most current ANSI/NSF Standard 46, between the aerobic treatment unit and the pump tank (or in the pump tank). If chlorination is used as the disinfection method, a free chlorine residual of two tenths of a milligram per liter (0.2 mg/l) must be maintained in the pump tank. All other methods of disinfection shall effectively reduce the fecal coliform count to less than two hundred colonies per one hundred milliliters (200/100 ml).

(4) **Pump tank.** There shall be a pump tank, which shall:

(A) meet the requirements of ANSI/NSF Standard 40 or 252:641-7-2;

(B) have a minimum liquid capacity of seven hundred (700) gallons or, for systems with an average flow over three hundred fifty (350) gallons per day, have a liquid capacity of at least twice the average daily flow;

(C) have a sampling port in the pump tank at the discharge outlet or in the treated effluent line following the pump tank;

(D) have a float in the pump tank set so that the pump tank is never more than one-half (1/2) full;

(E) have a high-water alarm set to activate and alert the owner/operator if the pump tank becomes more than one-half (1/2) full; and

(F) have an opening of sufficient size to allow for maintenance that extends a minimum of two inches (2") above ground elevation. The cover for the opening shall have a lock, locking bolt or some type of fastener, or require a tool for removal.

(5) **Dispersal field.** Effluent treated by an aerobic treatment unit shall be dispersed ~~using either a spray irrigation field or a drip irrigation field~~ as described in Subchapter 12 of this Chapter.

(c) **Level.** Once installed, the top of each tank (i.e., trash tank, aerobic treatment unit and pump tank) shall have no more than one inch (1") variation in elevation from side to side and end to end.

(d) **Depth of aerobic treatment system components.** The top of all components of the aerobic treatment system, excluding the trash tank and dispersal field, shall be covered with no more than twenty-four inches (24") of soil.

(e) **Solid pipe.** The solid pipe used to connect the components of an aerobic treatment system must meet the minimum specifications listed in Appendix C.

(f) **Fall.** Unless a lift pump is utilized, there shall be fall between:

(1) the trash tank and the aerobic treatment unit; and

(2) the aerobic treatment unit and the pump tank.

(g) **Manufacture's specification.** All aerobic treatment systems shall be installed in accordance with the manufacturer's specifications.

252:641-10-3. Responsibility for maintenance

(a) **Mandatory two year maintenance period.** The installer of any aerobic treatment system including those providing nitrogen reduction shall maintain the aerobic treatment system for a period of two years following the date the system was installed at no additional cost to the owner. During the two-year mandatory maintenance period, the installer shall be responsible for the following:

(1) repairing, adjusting or replacing any broken or malfunctioning parts;

(2) when spray dispersal is used, testing and recording the free chlorine residual of the effluent in the pump tank at least once every six (6) months;

(3) measuring and recording the depth of the sludge in the trash tank at least once every six (6) months;

(4) measuring and recording the volume of the sludge in ~~the~~forced-air aerobic treatment ~~unit~~ units at least once every six (6) months;

(5) when pump tanks are used, conducting a clarity test and recording the results as passing or failing once every six (6) months. A passing clarity test is one where an eight-inch disk with alternating black and white quadrants is visible when placed on the bottom of the pump tank when the tank is at least one-third (1/3) full;

(6) notifying the owner of the system in writing of:

(A) the type and date of any repairs, adjustments or replacements performed on the system;

(B) the results of the free chlorine residual test if required and, when applicable, the need to add chlorine and how to do it;

(C) the depth of the accumulation of sludge in the trash tank and the need to have it pumped so that the depth of the sludge is never more than forty percent (40%) of the overall depth;

(D) the volume of the sludge in the aerobic treatment unit and the need to have it pumped so that the

volume of the sludge in the aerobic treatment unit is never more than forty percent (40%); and

(E) the results of the clarity test and, if it fails the test, what the installer did or the homeowner has to do to correct it; and

(7) documenting all maintenance and testing performed on the system and maintaining those records at his/her business for a period of three (3) years following the date of service.

(b) **Exclusions from maintenance.** The installer shall not be responsible for repairing aerobic treatment systems when the owner/operator is the sole cause of the damage to the system or the system's malfunction (e.g., sprinkler heads that properly retract into the ground but are nevertheless damaged by careless actions of the homeowner, excessive water usage, introduction of harmful items into septic system, etc.).

(c) **Owner responsible after two year period ends.** After the expiration of the two-year mandatory maintenance period, the owner of the aerobic treatment system shall be solely responsible for maintaining or hiring someone to maintain the system so that it operates as designed.

SUBCHAPTER 15. LAGOONS

252:641-15-3. Bottom construction

The bottom of the lagoon shall meet the following requirements:

(1) **Level bottom.** The bottom of the lagoon shall be level.

(2) **Compacted clay.** The bottom of the lagoon and the interior slope of the dike shall be constructed of homogeneous clay soil and shall be compacted thoroughly.

(3) **Leakage test required.** During the final inspection, a leakage test shall be conducted on the lagoon.

(A) **Leakage test procedure.** The leakage test shall be performed in a manner approved by the DEQ or by:

(i) digging one (1) hole in the bottom of the lagoon and four (4) equally spaced holes on the interior slope of the dike at the four-foot water elevation line of the lagoon. The test holes shall be six inches (6") deep;

(ii) presoaking the holes by filling them with water and refilling them as necessary to maintain a water depth of six inches (6") in each hole for at least four (4) hours. The presoak shall commence no earlier than twenty-four (24) hours prior to the start of the leakage test procedure; and

(iii) after completing the presoak, filling each hole with water and then recording the drop in the water level in sixty (60) minutes or the time it takes until one inch (1") of water has percolated into the soil.

(B) **Failing leakage test.** If the leakage rate in any of the test holes exceeds one inch (1") in sixty (60) minutes, the lagoon shall be lined with~~ bentonite,~~ twelve inches (12") of compacted clay (Group 5 soil) or bentonite, or a synthetic liner in accordance with OAC 252:656. The lagoon shall be retested after installation of a clay or bentonite liner and may not be approved until the leakage rate is less than or equal to one inch (1") in sixty (60) minutes.

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]

APPENDIX C. PIPE SPECIFICATIONS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]

USE	PIPE SIZE	ACCEPTABLE MATERIALS
Building sewer and other solid pipe when used for single family residences only	Minimum 3" diameter	*Acrylonitrile Butadiene Styrene (ABS)*: ASTM D2661 ASTM D2751 ASTM F628 *Polyvinyl Chloride (PVC)*: ASTM D2665 ASTM D2949 ASTM 3033 ASTM 3034 ASTM F789
Building sewer and other solid pipe when the average flow is 2,000 gpd or less	Minimum 4" diameter	
Building sewer and other solid pipe when the average flow is greater than 2,000 gpd	Minimum 6" diameter	
Discharge line from lift stations or other pressurized effluent waste water lines†	Minimum 1" diameter	*Polyvinyl Chloride (PVC)*: ASTM D2846 ASTM F441 ASTM F442 Schedule 40
Low pressure dosing manifold pipe	3" diameter	
Low pressure dosing perforated pipe	1 ½" diameter	
Perforated pipe when used in a conventional subsurface absorption field or an ET/A field	Minimum 3" diameter	*Polyethylene (PE)*: ASTM F405 ASTM F810 ASTM D3350 *Polyvinyl Chloride (PVC)*: ASTM D2729 ASTM D3034 ASTM D3350

†All reclaimed, pressurized water piping shall be colored purple (Pantone 522) by the manufacturer.

[OAR Docket #12-657; filed 5-21-12]

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

[OAR Docket #12-739]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Introduction
252:656-1-1 [AMENDED]
252:656-1-2 [AMENDED]
252:656-1-3 [NEW]
Subchapter 3. Permit Procedures
252:656-3-1 [AMENDED]
252:656-3-2 [AMENDED]
252:656-3-4 [AMENDED]
252:656-3-5 [AMENDED]
252:656-3-6 [AMENDED]
252:656-3-8 [REVOKED]
252:656-3-9 [AMENDED]
252:656-3-10 [AMENDED]
Subchapter 9. General Standards
252:656-9-2 [AMENDED]

Subchapter 25. Wastewater Land Application Systems
252:656-25-1 [AMENDED]
252:656-25-2 [AMENDED]
Subchapter 27. Wastewater Reuse [NEW]
252:656-27-1 [NEW]
252:656-27-2 [NEW]
252:656-27-3 [NEW]
252:656-27-4 [NEW]
252:656-27-5 [NEW]

AUTHORITY:
Environmental Quality Board, 27A O.S.§ 2-2-101; Water Quality Management Advisory Council, 27A O.S. § 2-2-201; and 27A O.S.§§ 1-3-101, 2-3-202, 2-3-402, 2-3-501, 2-6-103, 2-6-203, 2-6-402 and 2-6-501.

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N/A

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N/A

ANALYSIS:
The DEQ proposes to amend OAC 252:656 as follows: (1) to incorporate design, construction and permitting requirements for four categories of water reuse systems (Categories 2 through 5); (2) to establish permit application fees for water reuse treatment systems and reclaimed water distribution systems in accordance with the existing fee structure in OAC 252:656-3-9; (3) to remove a duplicate financial responsibility section; and (4) to clarify language in existing sections. The requirements for the land application of wastewater from lagoon systems are being moved from Chapters 619 and 621 to this Chapter as Categories 4 and 5 reclaimed water.

CONTACT PERSON:
The contact person is Mark Hildebrand. Mark may be contacted at: Mark.Hildebrand@deq.ok.gov (e-mail), (405) 702-8100 (phone) or (405) 702-8101 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The DEQ's mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1, WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. INTRODUCTION

252:656-1-1. Applicability

(a) This chapter sets the permit and construction standards for wastewater collection systems and treatment works. It does not apply to innovative technology (see 27A O.S. § 2-6-401), to small public sewage systems as defined in 27A O.S. § 2-6-101 (also see OAC 252:641, Individual and Small Public On-Site Sewage Treatment Systems), nor does it apply to industrial wastewater (see OAC 252:606, Oklahoma Pollutant Discharge Elimination System (OPDES) Standards and OAC 252:616, Industrial Wastewater Systems). There are other rules that also may govern wastewater systems, such as OAC 252:621, Non-Industrial Flow-Through and Public Water Supply Impoundments~~ including Land Application~~; OAC 252:619, Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems~~ and Land Application~~; OAC 252:627, Operation and Maintenance of Water Reuse Systems; OAC 252:515, Management of Solid Waste; and the federal OSHA standards.

(b) This chapter applies to any person or entity that constructs or modifies a wastewater collection system or treatment works that is not:

(1) a small public sewage treatment system as defined in 27A O.S. § 2-6-101, or

(2) an industrial wastewater system.

252:656-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"208 ~~plan~~ Plan" means an area wide wastewater treatment management plan that states are required to submit to EPA for approval pursuant to section 208 of the Clean Water Act, 33 U.S.C. § 1288.

"ASTM" means the American Standard Testing Method and Material.

"Biosolids" means organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as a soil amendment. This term is within the meaning of "sludge" as defined in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:

(A) Class A Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (a);

(B) Class B Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (b).

"BOD" means total 5-day biochemical oxygen demand.

"Bypass" means the intentional or unintentional diversion of a waste stream from any portion of a wastewater treatment system.

"CBOD" means 5-day carbonaceous biochemical oxygen demand.

"Cell" means an individual basin of a lagoon system.

"cfm" means cubic feet per minute.

"Collection system" means pipelines or conduits, pumping stations, force mains and all other facilities used to collect or conduct wastewater to a treatment works.

"DEQ" means the Oklahoma Department of Environmental Quality.

~~**"Deviation"** means change from the adopted or current standards for equipment, material or process.~~

"Discharge point" means the point at which wastewater enters Waters of the State or become Waters of the State.

"Domestic wastewater" means wastewater from drinking fountains, showers, toilets, lavatories and kitchens.

"End-of-pipe" means the terminal points in all reclaimed water users'distribution systems.

"Engineer" means a person licensed to practice engineering in Oklahoma.

"fps" means feet per second.

"Freeboard" means the vertical distance from the surface water level to the overflow elevation in a ~~treatmet1~~treatment unit.

"GPM" means gallons per minute.

"Land application" means the controlled application of treated wastewater onto the land surface for beneficial use.

"MGD" or "mgd" means million gallons per day.

"MLSS" means mixed liquor suspended solids.

"MLVSS" means mixed liquor volatile suspended solids.

"New technology" means any method, process or equipment which is used to treat or convey sewage which is not addressed in this Chapter. This does not refer to innovative technology as defined by 40 CFR Part 35.

"NPDES" means the National Pollution Discharge Elimination System.

"OAC" means Oklahoma Administrative Code.

"OSHA" means the Occupational Health and Safety Administration.

"Open storage basin" means an uncovered basin, below or above ground level, that is designed, maintained and operated to store Category 2 or 3 reclaimed water.

"Person" means any individual, company, corporation, government agency, municipality, or any other entity.

"Population equivalent" and **"PE"** mean the calculated population which would normally contribute the same amount of biochemical oxygen demand (BOD) per day of wastewater. It is computed on the basis of 0.17 lb. of 5-day BOD per capita per day.

"PSRP" means process to significantly reduce pathogens.

"PVC" means polyvinyl chloride.

"Reclaimed water" means wastewater that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.

"Retention time" means the theoretical time required to displace the contents of a tank or treatment unit at a given rate of flow (volume divided by rate of flow).

"~~Rip-rap~~ Riprap" means a permanent, erosion resistant ground cover that consists of hard, sound durable stones that average in weight between thirty to fifty pounds (30-50 lbs), with no more than twenty percent (20%) weighing less than twenty pounds (20 lbs).

"Service line" means a wastewater line that connects an individual home, building or business to a permitted collection system.

"Total Kjeldahl nitrogen (TKN)" means the total of the organic and ammonia nitrogen.

"Treatment works" means any plant, disposal field, lagoon, incinerator or other facility used to treat, stabilize, hold or reclaim non-industrial wastewater.

~~**"Total Kjeldahl nitrogen (TKN)"** means the total of the organic and ammonia nitrogen.~~

"UL" means Underwriters Laboratories Inc.

"U.S.C." means United States Code.

"Variation" means change from the adopted or current standards for equipment, material or process.

"Wastewater system" means a collection system and treatment works.

"Water reuse system" means a treatment and distribution system designed to treat and supply reclaimed water.

252:656-1-3. Permit requirements

(a) **Permit to construct.** No one shall construct, modify or put into operation a wastewater system or a water reuse system without first obtaining a permit to construct from DEQ. Permits to construct will not be issued for new Category 4 restricted golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(b) **Permit to supply.** No one shall supply reclaimed water without first obtaining a permit to supply from DEQ.

SUBCHAPTER 3. PERMIT PROCEDURES

252:656-3-1. Permitting process

(a) This subchapter implements the permitting process of Part 4, Water and Wastewater Treatment Systems, 27A O.S. § 2-6-401 *et seq*, the Uniform Permitting Act, Title 27A O.S. § 2-14-101 and the rules promulgated pursuant thereto.

(b) ~~A permit is~~Permits are required for the construction or modification of ~~a~~ non-industrial wastewater ~~system~~ and water reuse systems.

(c) The permit application is a two-step process:

(1) The first step is the submission of an engineering report (as described in OAC 252:656-3-4); and

(2) The second step is the submission of the final design report along with the required application forms and fees. The final design report shall:

(A) include two (2) sets of plans and specifications, and

(B) reflect any changes from the approved engineering report.

(d) Unless an extension is granted, a construction permit expires if construction does not begin within one (1) year from the date the permit is issued.

(e) Permits to construct or modify non-industrial wastewater ~~systems~~ and water reuse systems shall only be issued to public entities unless all components of the proposed systems, including all service lines, are located on property:

(1) owned by the applicant, or

(2) dedicated to the applicant through a recorded easement for the installation and operation of the system.

252:656-3-2. Applications

(a) **Permit application requirements.** ~~The applicant~~ Applicants seeking permits to construct either a non-industrial wastewater or water reuse system shall submit the following to DEQ:

(1) an application;

(2) the appropriate fee;

(3) two (2) copies of an engineering report in compliance with OAC 252:656-3-4;

(4) two (2) sets of plans and specifications; and

(5) documentation of adequate financial accountability.

(b) **Application.** The application shall be complete and legible ~~applications on forms provided by the DEQ~~ and include:

(1) the type of entity that is applying for the permit,

(2) the legal description of the property where the system will be located,

(3) ~~a minimum of two (2) sets of plans and specifications,~~

~~(4)~~ a final design analysis,

~~(5) applicable fees,~~ and

(~~6~~4) a list of all applicable ASTM standards required for construction, installation and testing of the processes and equipment listed in the plans and specifications.

(~~b~~c) **Governing body and authority of public entity.** Public entities other than municipalities shall provide certified copies of the results of the last election or appointment of the members of the governing body. Public entities must also provide ~~a citation of~~ citations to their legal authority to own and operate the proposed facility.

(~~c~~d) **Notice to political subdivision.** If the proposed facility is to be located within a political subdivision, the applicant must notify the political subdivision.

(~~d~~e) **Financial accountability.** All applicants must demonstrate they have adequate financial accountability, and technical and managerial capacity to comply with the requirements of this Chapter and to continuously maintain the facility.

(1) If the applicant is not a city, town or other public entity, the applicant must demonstrate to the satisfaction of the DEQ:

(A) that the ~~facility~~ applicant can cover the expected costs for operation and maintenance, replacement and closure;

(B) that the applicant can provide for the continued existence and financial accountability of the facility;

(C) that provisions have been made for continued existence of the operating entity for the expected life of the facility; and

(D) that all components of the non-industrial wastewater or water reuse system, including service lines, are located on property under the control of the applicant through a recorded easement or ownership of the property. [See 27A O.S. § 2-6-401(A)].

(2) Financial accountability may be demonstrated in one of the following fashions:

(A) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater system for the expected life of the facility; or

(B) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater system may be submitted to DEQ for approval; and

(3) Costs for closure of the wastewater system as required by law must be included in any funding plan.

(~~e~~f) **Transferring applications.** Applications and unexpired permits may be transferred upon showing the transferee has legal authority and financial accountability, and that both parties agree to the transfer.

(g) **Compliance with permit.** Applicants ~~must~~ shall:

(1) construct ~~facilities~~ wastewater and water reuse systems according to the plans and specifications ~~that are~~ approved~~.~~ by DEQ;

(2) ~~Applicants must~~ comply with the terms of the permits that are issued by DEQ. Permits may contain provisions more stringent than these rules in order to meet water quality standards~~.~~;

(~~g~~3) ~~Applicants must have adequate staff and procedures in place to assure construction does not :(1)~~ not proceed with construction before the ~~plans and specifications are approved~~ permit is issued by DEQ;~~or~~ and

(~~2~~4) not deviate from the approved plans and specifications.

252:656-3-4. Engineering report

(a) ~~Submit~~Applicants shall submit to DEQ two (2) copies of the engineering report for proposed new construction or modifications to sewage collection systems, or treatment works at least thirty (30) days prior to the submittal of plans and specifications. Applicants shall also submit a letter in which the applicant endorses the contents of each engineering report submitted to DEQ. For line extension and lift station construction, the submission of an Engineering Report Form, developed by ~~the~~ DEQ, signed and sealed by an engineer licensed by the State of Oklahoma, may be submitted to meet the requirements of the necessary engineering report, unless a full engineering report is required by ~~the~~ DEQ. Engineering reports ~~must~~ shall include:

(1) **Volume and strength of sewage flow.** Establish the existing and anticipated design average and design peak flows and waste load for the existing and ultimate conditions. Include the basis for projecting initial current and/or future dry and wet weather flows and waste load for the existing, or initial, service area, and the anticipated future service area. For discharging facilities, the report must demonstrate that the proposed project complies with the design flow in the 208 Plan and other applicable OPDES permit limits.

(2) **Existing system.** Describe the existing system, including the needs for the project related to health and safety, system operations and maintenance, and population growth. Issues that must be addressed include, but are not limited to, suitability of existing facilities for continued use, adequacy of water supply, history of compliance with state and federal requirements, and comparison of existing treatment units with state and federal design requirements.

(3) **Project description and alternatives.** The report must contain a description of the alternatives that were considered to meet the identified need. Provide a service area and project site ~~map~~ maps showing the existing and

proposed systems. The information must describe legal and natural boundaries, major obstacles, elevations, and any other information necessary to properly evaluate the project. Describe the proposed project and, where two or more solutions exist, discuss the alternatives including cost analysis and discuss the reasons for selecting the one recommended. For each alternative considered, the report must provide the following:

(A) **Description.** A description of the collection system, pumping systems, treatment, and discharge facilities associated with each alternative as applicable.

(B) **Design criteria.** The design parameters used for evaluation purposes.

(C) **Schematic.** A schematic diagram(s) of all existing and proposed treatment processes.

(D) **Land requirements.** The identification of sites and easements that will be used and whether the sites:

(i) are currently owned or leased by the applicant, or

(ii) will be acquired or leased by the applicant.

(E) **Construction problems.** A discussion of concerns such as subsurface rock, high water table, limited access, or other conditions that may affect the cost of construction or the operation of the facility.

(F) **Advantages and disadvantages.** A description of the ability of each alternative to meet the owner's needs, address violations cited in any enforcement orders, satisfy public and environmental concerns, and comply with regulatory requirements. The report must demonstrate the compatibility of each alternative with existing, comprehensive, and area-wide development plans. Provide a short description of environmental impacts that may preclude any alternatives.

(G) **Selected alternative.** A complete description of the proposed project based on the general description presented in the evaluation of alternatives. The report must show that the proposed project will comply with all the requirements of this Chapter. At a minimum, the following information must be included:

(i) **Treatment.** A description of the processes, including biosolids management, in detail and the identification of the location of the plant and the site of any discharges; a status of compliance with the 208 Plan, and if applicable, include current revisions with copy of DEQ approval letter, if approved in the current 208 Plan.

(ii) **Pumping stations.** The size, type, location and any special power requirements, including provisions for emergency operations, of all pumping stations.

(iii) **Collection system layout.** Identify general location of line improvements, including: lengths, sizes and key components.

(iv) **Calculations.** Provide supporting calculations in sufficient detail to demonstrate compliance with DEQ design requirements to assure adequate capacity for the collection and treatment system as a whole to transport and treat the wastewater or reclaimed water. For collection system projects, the submittal must include a map with a list of manholes and pipes and the associated characteristics, such as elevation of inverts, pipe diameter, pipe segment length, and other information necessary to evaluate the project. The report must provide assurance that the receiving collection and treatment systems have adequate capacity.

(4) **Construction sequence.** A description of the sequence of construction and steps needed to maintain compliance during construction. If the project is not to be completed in one sequence, then provide details of the phases.

(5) **Site.** Describe the topography, soils, geologic conditions, depth to bedrock, groundwater level, floodway or floodplain considerations, and other pertinent site information. The project must be constructed on the site consistent with approved plans. Include 6 months of data on the groundwater level. Provide soil boring information pursuant to OAC 252:656-11-3 (a) for projects that include lagoons or other non-industrial impoundments.

(6) **Water supply.** Identify surface water intakes within five (5) miles of the discharge and known public and private water wells within three hundred feet (300').

(7) **Receiving stream.** Identify the receiving stream and its wasteload requirements according to the Water Quality sections of OAC 252:606 and Oklahoma's Water Quality Management Plan (208 Plan).

(8) **Disposition of biosolids.** Discuss the available alternatives for biosolids reuse and/or disposal (OAC 252:606 and OAC 252:515). Submit a sludge management or sludge disposition plan to DEQ for approval. All biosolids that will be land applied and/or disposed in a landfill must comply, at a minimum, with the Class B pathogen reduction requirements contained at 40 CFR, Part 503, adopted by reference at OAC 252:606.

(9) **Industrial wastes.** Discuss the characteristics and volume of anticipated industrial wastes.

(10) **Collection system.** Describe the area to be served by existing and proposed sewers. Sewer capacities must be designed for the estimated ultimate population that will be served. Similarly, consideration must be given to the maximum anticipated loadings from institutions, industrial parks and other similarly situated facilities.

(11) Financing. Provide itemized cost estimates to build, operate and maintain the proposed project-including, but not limited to:

(A) development, construction, land and rights-of-way, legal services, engineering services, contingencies, refinancing, and any other factors associated with the proposed project;

(B) discuss financing methods;

(C) provide information regarding rate structures, annual operating and maintenance (O&M) cost, tabulation of users by monthly usage categories and revenue received for the last three fiscal years; and

(D) give status of existing debts and required reserve accounts. Include a schedule of short-lived assets and a recommended annual reserve deposit to fund replacement of short-lived assets such as pumps, paint and small equipment.

(12) **Enforcement orders.** Discuss all applicable enforcement orders, including the violations cited in the orders and how the project will eliminate said violations.

(13) **Conclusions and Recommendations.** Provide any additional findings and recommendations that must be considered in development of the project. This must include recommendations for a specific course of action to be undertaken, any special studies to be developed, highlight the need for special coordination, include a recommended plan of action to expedite project development, etc.

(14) **Project Schedule.** The report must propose a schedule to obtain funds to complete the proposed project, submit construction plans, specifications, and permit application(s), start construction, complete construction, and attain compliance with applicable OPDES discharge permits.

(b) **Water reuse treatment and reclaimed water distribution systems.** Applicants shall submit to DEQ two (2) copies of the engineering report for proposed new construction or modifications to water reuse treatment and reclaimed water distribution systems. Engineering reports shall be submitted at least thirty (30) days prior to the submission of plans and specifications and all engineering reports submitted to DEQ shall be signed and sealed by an engineer licensed by the State of Oklahoma. Applicants shall also submit a letter in which the applicant endorses the contents of each engineering report submitted to DEQ. For line extension and lift station construction, the submission of an Engineering Report Form, developed by DEQ, signed and sealed by an engineer licensed by the State of Oklahoma, may be submitted to meet the requirements of the necessary engineering report, unless a full engineering report is required by DEQ. Engineering reports shall include the following, as applicable:

(1) **Volume and quality of reclaimed water flow.** Describe anticipated flow from wastewater treatment works to the water reuse treatment facility. For discharging facilities, the report must demonstrate how the proposed project impacts the design flow in the 208 Plan and other applicable OPDES permit limits.

(2) **Existing system.** Describe existing wastewater treatment and water reuse systems. Descriptions shall include: the suitability of existing facilities for continued use, adequacy of water supply and the facility's history of compliance with state and federal requirements.

(3) **Project description.** Provide service area and project site maps showing the existing and proposed systems. The information shall describe legal and natural boundaries, elevations, major obstacles and any other information necessary to properly evaluate the project. Project descriptions shall include the following:

(A) **Description.** A description of the wastewater treatment system preceding the water reuse treatment facility.

(B) **Design criteria.** The design parameters used for evaluation purposes.

(C) **Schematic.** Schematic diagrams of all existing and proposed treatment processes.

(D) **Land requirements.** Identification of the sites and easements that will be used and whether the sites:

(i) are currently owned or leased by the applicant, or

(ii) will be acquired or leased by the applicant.

(E) **Treatment.** A detailed description of the treatment processes, including biosolids management, identification of the location of the plant and the site of any discharges:

(i) **Pumping stations.** Identify the size, type, location, any special power requirements and provisions for emergency operations of all pumping stations.

(ii) **Reclaimed water distribution system layout.** Identify the general locations of line improvements, including lengths, sizes and key components.

(iii) **Calculations.** Provide supporting calculations in sufficient detail to demonstrate compliance with DEQ design requirements.

(4) **Construction sequence.** A description of the sequence of construction and steps needed to maintain compliance during construction. If the project is not to be completed in one sequence, then provide details of the phases.

(5) **Site.** Describe the topography, soils, geologic conditions, depth to bedrock, groundwater level, floodway or floodplain considerations, and other pertinent site information. The project must be constructed on the site consistent with approved plans. Include 6 months of data on the groundwater level. Provide soil boring information pursuant to OAC 252:656-11-3 (a) for projects that include lagoons or other non-industrial impoundments.

(6) **Biosolids handling.** If the proposed project will increase the production of biosolids and/or residuals, provide a description of any modifications necessary to properly treat and dispose of biosolids. All biosolids that will be land applied and/or disposed in a landfill must comply, at a minimum, with the Class B pathogen reduction requirements contained at 40 CFR, Part 503, adopted by reference at OAC 252:606. Submit a sludge management or sludge disposition plan as appropriate to the DEQ for approval.

(7) **Reclaimed water distribution system.** A description of the following:

(A) The location, size, and direction of flow of all existing and proposed reclaimed water distribution lines from the point of connection with the existing

or proposed treatment works or storage locations to the end user.

(B) A summary of quantities that includes, at a minimum, pipe size, materials and linear feet of piping, types of testing and number and size of pumps.

(C) The disinfection system design based on one of the following criteria:

(i) maintaining a chlorine residual to end-of-pipe pursuant to Appendix A of OAC 252:627; or

(ii) a DEQ approved calibrated model of chlorine decay rate in the distribution system to demonstrate that adequate chlorine residual will be maintained to prevent slime growth and regrowth of pathogens to end-of-pipe.

(8) **Financing.** Itemized cost estimates to build, operate and maintain the proposed project including, but not limited to:

(A) development, construction, land and rights-of-way, legal services, engineering services, contingencies, refinancing, and any other factors associated with the proposed project;

(B) financing methods;

(C) information regarding rate structures, annual operating and maintenance (O&M) cost, tabulation of users by monthly usage categories and revenue received for the last three fiscal years; and

(D) the status of existing debts and required reserve accounts. Include a schedule of short-lived assets and a recommended annual reserve deposit to fund replacement of short-lived assets such as pumps, paint and small equipment.

(9) **Enforcement orders.** A discussion of all enforcement orders, identifying the violations cited in orders and explaining how the project will eliminate those violations.

(10) **Conclusions and Recommendations.** All engineering reports shall include a recommendation for a specific course of action to be undertaken, The conclusions and recommendations shall also include any additional findings, identify any special studies to be developed, and any other recommendations that must be considered in development of the project.

(11) **Project Schedule.** A proposed schedule to obtain funds to complete the proposed project, submit construction plans, specifications, and permit application(s), start construction, complete construction, and attain compliance with applicable OPDES discharge permits.

252:656-3-5. Plans and specifications

(a) **General ~~layout~~ plans.** ~~Submit~~Applicants shall submit to DEQ two (2) copies of general plans that include the following:

(1) **Plan view.** Include a plan view of the plant and any discharge points, using at least 10-foot contours.

(2) **Flood elevations.** Show both the 25-year and 100-year flood elevations and their boundaries.

(3) **Existing and proposed treatment works.** Show the physical arrangement of all treatment units on a project site plat.

(4) **Existing collection systems.** Show the location, size and direction of flow of all existing sanitary sewers at the point of connection with proposed new sanitary sewers. Show the elevations of all sewer inverts close to the manholes.

(5) **Proposed collection systems.** Show the location of all proposed sewers, sewer easements and direction of flow. Number all manholes on the layout and correspondingly on the profile. Provide a summary of quantities that includes, at a minimum, linear feet of trenching, number of manholes, size, materials and linear feet of piping, types of testing and number and size of pumps (if applicable).

(6) **Existing and proposed reclaimed water distribution systems.** Show the location, size, and direction of flow of all existing and proposed reclaimed water distribution lines from the point of connection with the existing or proposed treatment works or storage locations to the end user. Provide a summary of quantities for proposed reclaimed water distribution lines that includes, at a minimum, pipe size, materials and linear feet of piping, types of testing and the number and size of pumps. Testing specifications shall include requirements for flushing mains to remove any construction debris before placing the system into service. Construction of reclaimed water distribution systems shall be in accordance with OAC 252:626-19-2, except as follows:

(A) locate reclaimed waterlines at least 5 feet horizontally from any existing or proposed potable waterlines;

(B) locate reclaimed waterlines at least 5 feet horizontally from any existing or proposed sewer lines;

(C) locate reclaimed waterlines crossing any existing or proposed potable waterlines at least 2 feet vertically below the potable waterlines; and

(D) locate reclaimed waterlines crossing any existing or proposed sewer lines at least 2 feet vertically above the sewer lines.

(~~6~~7) **Drawings.** Show the name of the municipality, sewer district, or institution; scale in feet; north point; date; and name, telephone number, address, signature of engineer and/or imprint of engineer's seal on the drawings. In the case of bound documents, engineers must affix their seal, signature and date to the cover sheet or index page, which identifies all documents bound together for which the registrant has responsible charge. In the absence of a cover sheet or index page each sheet must have the seal, and dated signature of the registrant who has responsible charge. For bound documents involving multiple registrants, either each document in the bound set must be sealed, signed and dated by the registrant in responsible charge for that portion of the work, or the cover sheet or index page must be sealed, signed and dated by each registrant with a breakdown of responsibility for each document clearly identified. Draw general plans to a scale of 100 feet per inch. Establish and reference a permanent benchmark. The minimum plan size must be 11" x 17", one-sided and of adequate contrast sufficient for ~~microfilming~~electronic imaging and storage.

(b) **Detailed plans.** ~~Prepare~~ The applicant shall submit to DEQ two (2) copies of detailed plans drawn to a suitable scale. Plans to modify or extend existing wastewater treatment systems or water reuse systems ~~must~~ shall clearly indicate the changes. ~~The detailed plans must include the following:~~

(1) **Non-industrial wastewater systems.** Detailed plans for non-industrial wastewater systems shall include the following:

(A) **Sewer plan and profile.** Include a plan and profile of all sewers to be constructed showing all special features, such as inverted siphons, extra strength pipe, concrete encasements, outfall structures and sewer bridges. Show all stream crossings on the profile with stream bed elevations, normal flow elevation and extreme high and low water levels. Scale the profiles to not more than 100 feet per inch horizontal and 10 feet per inch vertical. Show the scale on the profiles. Show all known existing structures both above and below ground that might interfere with the proposed construction; including water mains, gas mains, storm drains, and nature of street surfacing. Show wyes on the plan view and dimensions from the nearest down-stream manhole recorded on maps.

(~~2~~ B) **Sewer details.** Include profiles showing manhole stationing, size of sewers, top of rim and sewer invert elevations at each manhole and the grade and length of sewers between adjacent manholes. Show ground elevations at the house line or at approximately 50 to 75 feet from the centerline of the sewer in each direction except in the case of out-fall and/or relief sewers, where no wyes for house connections are needed.

(~~3~~ C) **Sewer appurtenances.** Include the details of all ordinary sewer appurtenances such as manholes, drop manholes, inverted siphons and pumping stations. A sufficiently detailed drawing of each structure ~~shall~~ must show dimensions, equipment, elevations, capacities, and any explanatory notes necessary to make them easily interpreted.

(~~4~~ D) **Sewer cross sections.** Include cross sections for manholes, outfall structures, headwalls, pipe cradling and encasement, and similar structures.

(~~5~~ E) **Sewage pumping station details.** Include complete construction details showing number and size of pumps, isolation valves, check valves, alarm system and emergency operation provisions.

(~~6~~ F) **Treatment works hydraulic profile.** Show hydraulic profiles with sewage, supernatant liquor and sludge flow through the plant.

(~~7~~ G) **Schematic diagrams.** Label schematic piping diagrams with all lines, appurtenances and direction of flow.

(~~8~~ H) **Treatment units.** Provide complete construction details of all treatment units including high and low water levels of receiving stream.

(~~9~~ I) **Fillets.** Eliminate dead spots in all tanks by designing fillets and otherwise rounding edges.

(2) **Water reuse systems.** Detailed plans for water reuse systems shall include the following information:

(A) **Treatment works hydraulic profile.** Show hydraulic profiles with sewage, supernatant liquor and sludge flow through the system.

(B) **Schematic diagrams.** Label schematic piping diagrams with all lines, appurtenances and direction of flow.

(C) **Treatment units.** Provide complete construction details of all treatment units including high and low water levels of receiving stream.

(D) **Distribution system.** Provide complete construction details of the distribution system, which shall be designed in compliance with Subchapter 27.

(c) **Specifications.** ~~Complete~~ Applicants shall submit to DEQ complete detailed specifications for the proposed project ~~shall accompany, or be included in,~~ with the plans and ~~must~~ shall include a detailed summary of equipment and design data, with references to the specific applicable ~~specific ASTM~~ standards (e.g., ASTM, UL, etc.) for construction, installation and testing of said equipment.

(d) **Construction materials.** Applicants are responsible for complying with any occupational, safety and building codes. Reference in the plans or specifications where these codes require special construction materials, such as the National Electrical Code requirement for explosion-proof wiring where gases may accumulate. The DEQ will not, however, determine whether the proposed construction will meet such codes.

(e) **Redundant equipment.** Provide a backup for all treatment units and pumping equipment to provide for equipment maintenance and repair.

(f) **Maintenance and cleaning.** For maintenance and operational controls, all units must be equipped with means for cleaning. Direct discharge of untreated sewage is prohibited.

(g) **Weather protection.** Protect the structures and all electrical and mechanical equipment and controls from elements and a 100-year flood. Protect mechanical units, pumps, valves and piping from freezing.

(h) **Construction sequence.** Include a program for keeping existing wastewater facilities in compliance with all applicable water quality permit conditions during construction of additional facilities ~~(see 252:6563-4(3))~~ in accordance with OAC 252:656-3-4(a)(4) and/or OAC 252:656-3-4(b)(4).

252:656-3-6. Revisions

(a) **Approved plans.**

(1) **Before contract is awarded.** Any changes from approved plans or specifications affecting capacity, flow or operation of units must be submitted to the DEQ as an addendum for review and approval. The DEQ must review and approve the submission before construction can commence based on the addendum.

(2) **After contract is awarded.** After a contract has been awarded, submit proposed changes from approved plans or specifications in the form of a Change Order, signed and sealed by an engineer, licensed by the State of Oklahoma. The permittee and the contractor must sign Change Orders. The DEQ must review and approve the

submission of the proposed changes before construction can commence based on the Change Order.

(b) **As-built plans.** File as-built plans (plans of record) for wastewater treatment works and water reuse systems with ~~the~~ DEQ within six months after the project is completed, unless the engineer certifies that construction was completed according to the approved plans.

(c) **DEQ Inspection.** The applicant must notify the DEQ of construction completed pursuant to an Addendum or Change Order, a minimum of ten (10) days prior to the commencement of operations.

252:656-3-8. Financial responsibility [REVOKED]

~~(a) All applicants must demonstrate they have adequate financial, technical, and managerial capacity to comply with the requirements of this Chapter and to continuously maintain the wastewater treatment system.~~

~~(b) If the applicant is not a city, town or other public entity, the applicant must demonstrate to the satisfaction of the DEQ:~~

~~(1) expected costs for operation and maintenance, replacement and closure;~~

~~(2) continued existence and financial accountability; and that~~

~~(3) provisions have been made for continued existence of the operating entity for the expected life of the facility.~~

~~(c) Continued existence may be demonstrated in one of the following fashions:~~

~~(1) The applicant must provide proof of a sufficient amount on deposit to the credit of a trust, the powers of which are to operate and maintain the wastewater treatment system for the expected life of the facility; or~~

~~(2) Other proof of financial viability, such as the issuance of a bond or insurance contract covering the operation and maintenance of the wastewater treatment system may be submitted to DEQ for approval.~~

~~(d) Costs for closure of the wastewater treatment system as required by law must be included in any funding plan.~~

252:656-3-9. Fees

(a) Permits will not be issued until all fees are paid unless a monthly billing agreement with the DEQ and the permittee is current.

(b) Fees for treatment works construction are based on design flow and are as follows:

(1) New facilities and major modifications that alter the original design or the design capacity:

(A) 1.0 MGD and greater $5,440.00
(B) 0.50 MGD - 0.99 MGD $4,080.00
(C) 0.10 MGD - 0.49 MGD $2,720.00
(D) 0.01 MGD - 0.09 MGD $1,360.00
(E) less than 0.01 MGD $680.00

(2) Minor modifications that will not alter the design capacity of the facility such as flow measurement, discharge structures and equalization basins:

(A) 1.0 MGD and greater $1,360.00
(B) 0.50 MGD - 0.99 MGD $1,090.00
(C) 0.10 MGD - 0.49 MGD $814.00
(D) 0.01 MGD - 0.09 MGD $540.00
(E) less than 0.01 MGD $270.00

(c) Collection system and reclaimed water distribution system improvement fees are:

(1) Line extensions (rounded to the nearest one hundred feet (100'): $150.00 for the initial one to five hundred feet (1-500') plus $28.50 for each additional one hundred feet (100').

(2) Lift stations:$140.00 per 100 GPM for the peak capacity rating rounded to the nearest 100 GPM.

(3) Municipalities that are exempted from obtaining construction permits under OAC 252:656-3-3 shall submit payment to DEQ for twenty percent (20%) of the total fee calculated in this Subsection. This fee may be paid upon submission of plans, or on a monthly or quarterly basis.

(d) To assist in meeting rising costs to the Department for the non-industrial wastewater systems program and water reuse systems program, the fees set out in paragraphs (b) and (c) above shall be automatically adjusted on July 1st every year to correspond to the percentage, if any, by which the Consumer Price Index (CPI) for the most recent calendar year exceeds the CPI for the previous calendar year. The Department may round the adjusted fees up to the nearest dollar. The Department may waive collection of an automatic increase in a given year if it determines other revenues, including appropriated state general revenue funds, have increased sufficiently to make the funds generated by the automatic adjustment unnecessary in that year. A waiver does not affect future automatic adjustments.

(1) Any automatic fee adjustment under this subsection may be averted or eliminated, or the adjustment percentage may be modified, by rule promulgated pursuant to the Oklahoma Administrative Procedures Act. The rulemaking process may be initiated in any manner provided by law, including a petition for rulemaking pursuant to 75 O.S. § 305 and OAC 252:4-5-3 by any person affected by the automatic fee adjustment.

(2) If the United States Department of Labor ceases to publish the CPI or revises the methodology or base years, no further automatic fee adjustments ~~shall~~ must occur until a new automatic fee adjustment rule is promulgated pursuant to the Oklahoma Administrative Procedures Act.

(3) For purposes of this subsection, "Consumer Price Index" or "CPI" means the Consumer Price Index - All Urban Consumers (U.S. All Items, Current Series, 1982-1984=100, CUUR0000SA0) published by the United States Department of Labor. The CPI for a calendar year is the figure denoted by the Department of Labor as the "Annual" index figure for that calendar year.

(e) Emergency grant projects are exempt from construction permit fees (wastewater systems funded in part or in whole by grant monies made available through the Oklahoma Water Resources Board as authorized by Title 82, § 1085.39).

(f) REAP (Rural Economic Assistance Program) Grant Projects are exempt from permit fees.

(g) The maximum fee for any one application will not exceed $5,825.00. Any person or entity that constructs or modifies a wastewater collection system or treatment works

subject to these rules, prior to the issuance of a permit, is subject to the doubling of all fees required by this chapter, as deemed necessary to offset additional administrative costs of such reviews. Further, the submission of appropriate fees and/or the issuance of a permit does not preclude any person or entity from further enforcement and/or fines as set out by State statutes and rules, for constructing or modifying a wastewater collection system or treatment works prior to the issuance of all appropriate permits as required by this chapter.

252:656-3-10. Operation and Maintenance (O & M) Manual

Within ninety (90) days of the completion of ~~the project~~ construction, the applicant must submit to the DEQ an O & M Manual for the operation and maintenance of the wastewater treatment system or the water reuse system. The O & M Manual must include at a minimum:

(1) System Treatment Requirements;

(2) Current NPDES Permit wasteload requirements to water quality sections of OAC 252:606 including 208 ~~plan~~ Plan requirements;

(3) Description, Operation and Control of the Treatment Works;

(4) Control of Unit Processes;

(5) Laboratory Testing;

(6) Common Operating Problems;

(7) Start-Up Testing and Procedures;

(8) Normal Operating Procedures;

(9) Alternative and Emergency Operations;

(10) Emergency Shutdown Operations and Emergency Response;

(11) Records Control and Retention;

(12) Safety;

(13) Wastewater Treatment System Maintenance Requirements and/or Water Reuse System Maintenance Requirements; ~~and~~

(14) Spare Parts and Chemical Inventory~~.~~; and

(15) Reclaimed water storage and distribution system flushing plan to prevent slime growth, regrowth of pathogens and water age.

SUBCHAPTER 9. GENERAL STANDARDS

252:656-9-2. Essential facilities

(a) **Emergency power facilities.** All plants shall provide standby equipment which will generate electric power to allow continuity of operation, including but not limited to pumping, aeration and disinfection, during power failures.

(b) **Water supply.**

(1) **General.** Provide potable water under pressure to laboratories, restrooms, offices, drinking fountains and showers. Cross-connections between potable and non-potable water lines is prohibited.

(2) **Direct connections.** Potable water from a municipal or separate supply may be used directly at points above grade. Hot water shall not be taken directly from a boiler used for supplying hot water to a sludge heat exchanger or digester heating unit.

(3) **Indirect connections.** Where a potable water supply is to be used for any purpose in a plant other than those listed in paragraph (1), above, provide a break tank, pressure pump, and pressure tank. Discharge water to the break tank through an air gap at least six inches above the maximum flood line or the spill line of the tank, whichever is higher. Post a permanent sign at every hose bib, faucet, hydrant, or sill cock located on the water system beyond the break tank to indicate that the water is not safe for drinking. The installation of a reduced pressure zone backflow prevention device will be considered in lieu of the break tank. To allow maintenance on the backflow prevention device, the design shall include a bypass line with equal backflow prevention. Do not locate back-flow devices in a pit or vault where they may become submerged; they must be easily accessible for routine testing for proper operation.

(4) **Non-potable water outlets.** Post a permanent sign at non-potable water outlets indicating the water is not safe for drinking.

(5) **Prevention of cross-connections.** Do not allow a physical connection between potable water lines, sanitary sewer lines and/or reclaimed water lines unless a break tank is provided. All water discharged to a break tank shall be discharged through an air gap at least six inches (6") above the maximum flood line or the spill line of the tank, whichever is higher.

(c) **Laboratory equipment.** All treatment works shall have access to a laboratory for making analytical determinations and operation control tests.

(d) **Sewage flow measurement.** Flow measurement devices shall be selected for reliability and accuracy. All flow measurement equipment must be sized to function effectively over the full range of flows expected and shall be protected against freezing. Every primary flow measurement device must conform to the standard guidelines in the *Water Measurement Manual*, 3rd Edition, published by the United States Department of the Interior, Bureau of Reclamation. An equivalent set of standard guidelines may be used, if approved by the DEQ. Every primary measurement device, sharp crested weir or flume, must be equipped with an affixed staff gauge to measure the liquid level and placed at the proper head measurement location. For continuous flow measurement, the level sensor must be placed at the proper head measurement location equivalent to the location of the staff gauge so that the head measured using the staff gauge and that measured by the sensor are the same.

(1) **Influent flow.** Provide for the measurement of incoming flow at all non-industrial wastewater treatment plants. Where all incoming flow to a plant having a design flow of less than 0.5 mgd is through a single pump station, flow measurements may be satisfied by the calibration of pumps and the installation of run-time meters. Weirs must not be used to measure influent flow.

(2) **Effluent flow.** For discharging systems, provide for the measurement of wastewater effluent flow in accordance with the system's OPDES permit and OAC 252:606. For lagoon effluent, a baffle shall be provided to prevent the discharge of surface debris and algae to a depth of at least one foot (1') below the weir crest.

(3) **Land application.** For land application systems, effluent flow measurement shall be in accordance with OAC 252:656-25-2(h).

(4) **Closed channel flow measurement.** Provide the complete design information and calculations for all closed channel flow measurement devices.

(e) **Housed facilities.** Where treatment units are in a housed facility, introduce fresh air continuously at a rate of 12 air changes per hour, or intermittently at a rate of 30 air changes per hour. Provide adequate stairway access to above or below ground installations. All electrical installation in enclosed grit removal areas where hazardous gases may accumulate shall meet the requirements of the National Electrical Code.

SUBCHAPTER 25. WASTEWATER LAND APPLICATION SYSTEMS

252:656-25-1. The slow rate land application process

~~Land treatment~~ Slow rate land application is the controlled application of wastewater to the surface of land to achieve a designed degree of treatment through natural, chemical and biological processes that occur on and in the soil. In Oklahoma, slow rate land application systems are acceptable for meeting the agronomic water needs of pasture land, hay meadows and for crop production where the crops will not be eaten raw. See Appendix D for the loading rate, field area and storage volume equations. Refer to ~~Chapters OAC 252:619 and 252:621~~ OAC 252:627 for permit and operations criteria.

252:656-25-2. Slow rate land application system design

(a) **Treatment.** Primary treatment ~~is required~~ of wastewater shall be completed in the primary lagoon cell prior to being land applied. ~~Do~~ Wastewater from the primary lagoon cell shall not ~~land apply~~ be land applied ~~from the primary cell~~.

(b) **Loading rates.** Hydraulic loading, BOD, suspended solids, nitrogen, phosphorus and crop selection must all be considered in the process design of land applications systems. Typically loading rates of BOD and SS for municipal wastewater are far below the loading rates determined by other parameters and will not be a concern in system design.

(c) **Land area.** The total area required for a ~~wastewater~~ slow rate land application system includes the field area (application site), treatment and storage site (normally primary treatment lagoons and storage ponds), buffer zones and service roads.

(d) **Control.** The applicant shall show they have the right to control the use of the land application site. A long-term contract for a minimum of 20 years is required.

(e) **Buffer zone.** A buffer zone of at least 100 feet in width shall be provided between the land application site and adjacent property. Additional distance may be required where prevailing winds could cause aerosols to drift into residential areas. The buffer zone shall be a part of the permitted site.

(f) **Public contact.** ~~Disinfect the wastewater,~~ Wastewater shall be disinfected in accordance with 252:656-21 if it is to be applied to public contact areas.

(g) **Storage.** Storage of wastewater is required for periods when available wastewater exceeds design hydraulic loading rate, and when the ground is saturated or frozen. A water balance computation is used to estimate the storage requirement. Provide water balance computations of the estimated storage needs. There shall be at least 90 days of storage in addition to the detention time required for primary treatment. The monthly available wastewater for each month shall be determined by equation (25-5) in Appendix D.

(h) **Flow measurement.** Provide for the measurement of wastewater to be land-applied. Flow measurement shall be accomplished by flow meters, or the calibration of pumps and installation of run-time meters.

(i) **Restrictions.** There shall not be any berms or other barriers on a land application site that would cause the pooling or ponding of wastewater at the land application site. Additionally, there shall not be any berms or barriers that impede the natural flow of stormwater from the site. No land application site shall exceed the maximum slope requirements at ~~252:621-5-2~~ OAC 252:627-3.

SUBCHAPTER 27. WASTEWATER REUSE

252:656-27-1. Categories of reclaimed water

The following are the categories of and allowed uses for reclaimed water:

(1) **Category 2.** Category 2 reclaimed water shall only be used for the allowed uses in Categories 3, 4 and 5, and:

(A) drip irrigation on orchards or vineyards;

(B) spray or drip irrigation on sod farms, public access landscapes and public use areas/sports complexes, including unrestricted access golf courses;

(C) toilet and urinal flushing;

(D) fire protection systems;

(E) commercial closed-loop air conditioning systems;

(F) vehicle and equipment washing (excluding self-service car washes); and

(G) range cattle watering.

(2) **Category 3.** Category 3 reclaimed water shall only be used for the allowed uses in Categories 4 and 5, and:

(A) subsurface irrigation of orchards or vineyards;

(B) restricted access landscape irrigation;

(C) irrigation of livestock pasture;

(D) concrete mixing;

(E) dust control;

(F) aggregate washing/sieving;

(G) new restricted access golf course irrigation systems;

(H) industrial cooling towers and once-through cooling systems; and

(I) restricted access irrigation of sod farms.

(3) **Category 4.** Category 4 reclaimed water shall only be used for the allowed uses in Category 5 and:

(A) soil compaction and similar construction activities; and

(B) existing restricted access golf course irrigation systems utilizing water that has received primary treatment in lagoon systems. Permits to construct shall not be issued for new Category 4 restricted golf course irrigation systems pending further research and evaluation of performance data collected from existing systems.

(4) **Category 5.** Category 5 reclaimed water shall only be used for:

(A) restricted access pasture irrigation for range cattle;

(B) restricted access irrigation of fiber, seed, forage and similar crops; and

(C) irrigation of silviculture.

252:656-27-2. General provisions

(a) **Prohibition against cross connections.** Permittees shall not allow physical connections between reclaimed water lines and public water supply lines. Permittees shall follow the requirements of OAC 252:626-5-15 and OAC 252:656-9-2.

(b) **Separation distances.** Systems shall be designed to ensure that direct and wind-blown spray from irrigation systems and other sources are confined to the designated irrigation areas. Systems shall also be designed to comply with the following minimum buffer zones and setback distances, with all distances being measured from the edge of the wetted perimeter of the irrigation area to the edge of the following features:

(1) **Wells.** Permittees shall maintain the following separation distances from wells for all categories of reclaimed water:

(A) three hundred feet (300') from public wells; and

(B) fifty feet (50') from private water wells.

(2) **Waters of the state.** Permittees shall maintain the following separation distances from creeks, lakes, ponds and other waters of the state:

(A) Category 2 reclaimed water - twenty-five feet (25'); and

(B) Categories 3, 4 and 5 reclaimed water - fifty feet (50').

(3) **Property lines.** Permittees shall maintain the following separation distances from adjacent property lines:

(A) Category 2 reclaimed water - twenty feet (20'); and

(B) Categories 3, 4 and 5 reclaimed water - one hundred feet (100').

(c) **Flow measuring devices.** Permittees shall provide flow measuring devices to measure the amount of reclaimed water being generated and distributed. Flow measurement devices shall have recording, totalizing and instantaneous indicating capabilities.

(d) **Control of land application site(s).** Wastewater treatment facilities that depend on land application to maintain total retention shall demonstrate they have the right to control the site(s) on which the effluent is applied. If Permittees do not own the land application site(s), long-term leases and/or contractual agreements for a minimum of twenty (20) years are required for each land application site.

(e) **Prohibition.** Wastewater facilities that utilize lagoon systems for treatment shall not be used as sources of Categories 2 or 3 reclaimed water.

(f) **Reclaimed water sources.** Only wastewater from facilities permitted pursuant to this Chapter may be used as a source for reclaimed water.

252:656-27-3. Treatment

(a) **Category 2 reclaimed water.** Water reuse systems generating Category 2 reclaimed water shall include the following:

(1) **Secondary treatment.** Asecondary suspended growth mechanical treatment process, or the equivalent approved by DEQ as a variance, capable of producing an effluent that conforms to the limits specified in Appendix A of OAC 252:627.

(2) **Nutrient removal.** A process in accordance with OAC 252:656-16-3 that will remove nutrients to the level required based on the final use of the reclaimed water. Systems may be exempt from the requirement to remove nutrients when documentation is provided to show that nutrients are utilized based on the agronomic and/or crop uptake rates of the final use.

(3) **Coagulation.** Coagulation with chemicals following the secondary treatment process.

(A) Coagulation, chemical feed and storage equipment shall meet the requirements of OAC 252:626-9 and OAC 252:626-11; and

(B) Rapid mix or inline static mixers shall be used to ensure the rapid dispersion and mixing of chemicals through the reclaimed water.

(4) **Filtration.** Granular media effluent filtration in accordance with OAC 252:656-23-1.

(5) **Turbidimeters.** Continuous online turbidimeters with recording devices installed following filtration and prior to disinfection.

(6) **Disinfection.** Disinfection by chlorination or a combination of UV and chlorination in accordance with OAC 252:656-21 and OAC 252:656-3-4(b)(7)(C). The method of disinfection shall achieve:

(A) 5-log removal or inactivation of Adenovirus type 15;

(B) 5-log removal or inactivation of *Salmonella typhimurium*; and

(C) 3-log removal or inactivation of *Giardia lamblia*.

(b) **Category 3 reclaimed water.** Water reuse systems generating Category 3 reclaimed water shall include the following:

(1) **Secondary treatment.** The secondary suspended growth mechanical treatment process, or the equivalent approved by DEQ as a variance, shall be capable of producing an effluent that conforms to the limits specified in Appendix A of OAC 252:627.

(2) **Nutrient removal.** A process in accordance with OAC 252:656-16-3 that will remove nutrients to the level

required based on the final use of the reclaimed water. Systems may be exempt from the requirement to remove nutrients when documentation is provided to show that nutrients are utilized based on the agronomic and/or crop uptake rates of the final use.

(3) **Disinfection.** Disinfection by chlorination in conformance with OAC 252:656-21 at the point of entry into the distribution system.

(c) **Category 4 reclaimed water.** Existing golf course land application systems generating Category 4 reclaimed water shall include the following:

(1) **Primary treatment.** Primary treatment through a wastewater lagoon system designed in accordance with OAC 252:656-11 and OAC 252:656-25-2(g) and (h).

(2) **Disinfection.** Chlorination in conformance with OAC 252:656-21 to disinfect the reclaimed water at the point of entry into the distribution system.

(3) **Storage detention time.** Storage detention time following primary treatment in accordance with OAC 252:656-25-2(g).

(d) **Category 5 reclaimed water.** Water reuse systems generating Category 5 reclaimed water shall include primary treatment through a wastewater lagoon system designed in accordance with OAC 252:656-11 and OAC 252:656-25-2(g) and (h).

252:656-27-4. Distribution systems

(a) **Piping.** All reclaimed water piping, valves, outlets and appurtenances in distribution systems shall be colored purple (Pantone 522) and shall be embossed or integrally stamped with a warning that includes the following:

(1) the word "CAUTION;"

(2) specifies the category number of the reclaimed water; and

(3) the words "DO NOT DRINK;" (e.g.: "CAUTION: CATEGORY #3 RECLAIMED WATERBDO NOT DRINK.") For all pipes, the warning shall be located on opposite sides of all pipes and repeated every three feet (3') or less.

(b) **Hose bibs.** Hose bibs shall be located in locked, below-grade vaults. Reclaimed water hose bibs, hydrants and/or similar outlets shall be equipped with warning signs that indicate the water is not safe for drinking.

(c) **Gravity pipes.** Reclaimed water gravity pipes shall be designed and constructed to meet the requirements of OAC 252:656-5-2, OAC 252:656-5-3, OAC 252:656-5-4 and OAC 252:656-5-5.

(d) **Pumping stations and force mains.** Pumping stations and force mains shall be designed and constructed in accordance with OAC 252:656-7-1 through 4, with the following exceptions:

(1) Pump openings less than three inches (3") may be allowed when settled or filtered reclaimed water is pumped.

(2) Water reuse systems with the ability to divert all reclaimed water to the wastewater's permitted discharge point, without operator assistance, may be exempt from the requirement to equip the lift station with emergency wet well storage, backup power supply or duplicate pumps.

(e) **Reclaimed water flushing system.** Reclaimed water distribution systems shall be designed with all appurtenances necessary to adequately flush the distribution system to prevent slime growth and the regrowth of pathogens. Flushing plans shall be developed for all reclaimed water distribution systems and submitted for DEQ approval. Flushing plans shall also be included in reclaimed water systems' O&M manuals [see OAC 252: 656-3-10] and in suppliers' DEQ approved inspection programs [see OAC 252:627-1-5(f)]. All flushing systems shall include at a minimum:

(1) provisions for disposal of flushed water that prevent bypasses and discharges to waters of the state or elsewhere; and

(2) air gaps designed pursuant to OAC 252:656-9-2 for all discharges to sanitary sewers.

252:656-27-5. Storage, retreatment and chlorination

(a) **Storage.** Reclaimed water may be stored as follows:

(1) **Storage tanks.** Categories 2-5 reclaimed water may be stored in storage tanks that meet NSF or ASTM standards for public water supply storage tanks.

(2) **Open storage basins.** Categories 2 and 3 reclaimed water may be stored in open storage basins that are permitted and constructed in compliance with OAC 252:656-11-3 and operated as a lagoon in accordance with OAC 252:619 or OAC 252:621.

(3) **Lagoons.** Categories 4 and 5 reclaimed water may be stored in lagoons that are permitted and constructed in compliance with OAC 252:656-11-3 and operated in accordance with OAC 252:619 or OAC 252-621.

(b) **Retreatment.** Following storage in an open storage basin, Category 2 reclaimed water shall be retreated with filtration and chlorination, at a minimum, to prevent slime growth and regrowth of pathogens to end-of-pipe.

[OAR Docket #12-739; filed 5-25-12]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 10. PURCHASING

[OAR Docket #12-610]

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317:10-1-1. [AMENDED]
317:10-1-12. [AMENDED]
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Purchasing rules are revised to align policy with Department of Central Services (DCS) rules. Rules refer to sections that are not valid; therefore rules need to be revised to reflect new numbering for DCS policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

317:10-1-1. Purpose

(a) The purpose of this Chapter is to describe the rules governing the contracting and purchasing requirements of the Oklahoma Health Care Authority (OHCA). The Contracts and Purchasing Divisions are internal divisions of the OHCA. These divisions provide the mechanism for the acquisition of goods, equipment, non-professional and professional services for the operation of the OHCA. These rules are superseded by the Oklahoma Department of Central Services (DCS) Purchasing rules ~~(OAC 580:15)~~(OAC 580:16) whenever DCS has final authority on an acquisition.

(b) Different rules apply depending on which of the above three entities is making the acquisition and whether the purchase is for professional services or non-professional services and products. When an acquisition is made by DCS, the DCS Purchasing rules at OAC ~~580:15~~580:16 apply. When an acquisition is made by OHCA, these rules must be read in conjunction with the DCS rules.

317:10-1-12. Protest of award

(a) Protests of awards made by the Authority under 74 Okla. Stat. § 85.5T are addressed at OAC 317:2-1-1 et seq.

(b) Bidders who wish to protest any other award shall follow the process outlined in the Oklahoma Department of Central Services rules at OAC ~~580:15-4-13~~580:16-3-21.

[OAR Docket #12-610; filed 5-10-12]

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

[OAR Docket #12-606]

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Part 1. General Scope and Administration
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ANALYSIS:
OHCA's provider agreements policy is expanded to explain situations in which a provider agreement and billing privileges may be revoked for improper actions. These situations include noncompliance with enrollment requirements, provider misconduct, and felony convictions, among others. These rules will assist the agency in provider integrity determinations and will align agency policy with CMS's Medicare regulations on provider agreements.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-19.1. Revocation of enrollment and billing privileges in the Medicaid Program.

OHCA and providers have the right to terminate or suspend contracts with each other. Remedies are provided in this Section that may be used by the agency in addition to a formal contract action against the provider. When the use of these remedies results in a contract action, appropriate due process protections will be afforded to the provider for that contract action. Subsections (1) through (10) are additional remedies under which OHCA may revoke a currently enrolled provider or supplier's SoonerCare billing privileges and any corresponding provider agreement or supplier agreement.

(1) **Noncompliance.** The provider or supplier is determined not to be in compliance with the enrollment requirements described in OAC 317:30-3-2, or in the enrollment application applicable for its provider or supplier type. All providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges, except for those imposed under subsections (2), (3), (5), or (7) of this Section.

(A) OHCA may request additional documentation from the provider or supplier to determine compliance if adverse information is received or otherwise found concerning the provider or supplier.

(B) Requested additional documentation must be submitted within 60 calendar days of request.

(2) **Provider or supplier conduct.** The provider or supplier, or any owner, managing employee, authorized or delegated official, medical director, supervising physician, or other health care personnel of the provider or supplier is:

(A) Excluded from the Medicare, Medicaid, or any other Federal health care program, as defined in 42 CFR 1001.2; or

(B) Is debarred, suspended, or otherwise excluded from participating in any other Federal procurement or nonprocurement program or activity.

(3) **Felonies.** The provider, supplier, or any owner of the provider or supplier, within the 10 years preceding enrollment or revalidation of enrollment, was convicted of a Federal or State felony offense that OHCA has determined to be detrimental to the best interests of the program and its beneficiaries. Denials based on felony convictions are for a period to be determined by the OHCA, but not less than 10 years from the date of conviction if the individual has been convicted on one previous occasion for one or more offenses. Offenses include but are not limited to:

(A) Felony crimes against persons, such as murder, rape, assault, and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions;

(B) Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions;

(C) Any felony that placed the Medicaid program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct; and

(D) Any felonies that would result in mandatory exclusion under 42 U.S.C. § 1320a-7a of the Social Security Act.

(4) **False or misleading information.** The provider or supplier certified as "true" misleading or false information on the enrollment application to be enrolled or maintain enrollment in the SoonerCare program. Offenders may be subject to either fines or imprisonment, or both, in accordance with current law and regulations.

(5) **On-site review.** OHCA determines, upon on-site review, that the provider or supplier is no longer operational to furnish SoonerCare covered items or services, or is not meeting SoonerCare enrollment requirements under statute or regulation to supervise treatment of, or to provide SoonerCare covered items or services for, SoonerCare members.

(6) **Provider and supplier screening requirements.**

(A) A provider does not submit an application fee that meets the requirements set forth in 42 CFR 455.460.

(B) Either of the following occurs:

(i) OHCA is not able to deposit the full application amount.

(ii) The funds are not able to be credited to the State of Oklahoma.

(C) The provider or supplier lacks sufficient funds in the account at the banking institution whose name is imprinted on the check or other banking instrument to pay the application fee; or

(D) There is any other reason why OHCA is unable to deposit the application fee.

(7) **Misuse of billing number.** The provider or supplier knowingly sells to or allows another individual or entity to use its billing number. This does not include those providers or suppliers who enter into a valid reassignment of benefits as specified in 42 U.S.C. § 1396a (a)(32) or a change of ownership as outlined in 42 CFR 455.104(c) (within 35 days of a change in ownership).

(8) **Abuse of billing privileges.** The provider or supplier submits a claim or claims for services that could not have been furnished to a specific individual on the date of service. These instances include but are not limited to situations where the beneficiary is deceased, the directing physician or beneficiary is not in the State or country when services were furnished, or when the equipment necessary for testing is not present where the testing is said to have occurred.

(9) **Failure to report.** The provider or supplier did not comply with the reporting requirements specified in the SoonerCare provider agreement or regulations.

(10) **Failure to document or provide OHCA access to documentation.**

(A) The provider or supplier did not comply with the documentation or OHCA access requirements specified in the SoonerCare Provider Agreement.
(B) A provider or supplier that meets the revocation criteria specified in (10)(A) of this subsection is subject to revocation for a period of not more than 1 year for each act of noncompliance.

[OAR Docket #12-606; filed 5-10-12]

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

[OAR Docket #12-602]

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Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-2. [AMENDED]
(Reference APA WF # 11-20)
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ANALYSIS:
Provider agreement rules are revised to ensure clarity. Revisions are made to reflect language in 42 CFR 455.414; that provider agreements must be renewed at least every five years. Additionally, revisions are made to revise the contact information for the OHCA Provider Contracting Unit.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-2. Provider agreements

In order to be eligible for payment, providers must have on file with OHCA, an approved Provider Agreement. Through this agreement, the provider certifies all information submitted on claims is accurate and complete, assures that the State Agency's requirements are met and assures compliance with all applicable Federal and State regulations. These agreements are renewed ~~annually~~at least every 5 years with each provider.

(1) The provider further assures compliance with Section 1352, Title 31 of the U.S. Code and implemented at 45 CFR Part 93 which provides that if payments pursuant to services provided under Medicaid are expected to exceed $100,000.00, the provider certifies federal funds have not been used nor will they be used to influence the making or continuation of the agreement to provide services under Medicaid. Upon request, the Authority will furnish a standard form to the provider for the purpose of reporting any non-federal funds used for influencing agreements.

(2) The provider assures in accordance with 31 ~~USCA~~USC 6101, Executive Order 12549, that they are not presently or have not in the last three years been debarred, suspended, proposed for debarment or declared ineligible by any Federal department or agency.

(3) For information regarding ~~annual~~ Provider Agreements or for problems related to a current agreement, contact the Oklahoma Health Care Authority, Provider Enrollment, ~~P.O. Box 18299, Oklahoma City, Oklahoma 73154-0299, or call 1-800-871-9347 for out-of-state or 405-525-1092 from within the state.~~P.O. Box 54015, Oklahoma City, Oklahoma 73154, or call 1-800-522-0114 option 5 toll free or 405-522-6205 for the Oklahoma City area.

[OAR Docket #12-602; filed 5-10-12]

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

[OAR Docket #12-593]

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RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-40. [AMENDED]
317:30-3-42. [AMENDED]
317:30-3-57. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-96.2. [AMENDED]

Part 9. Long Term Care Facilities
317:30-5-122. [AMENDED]
Part 39. Skilled Nursing Services
317:30-5-390. [AMENDED]
Part 41. Family Support Services
317:30-5-410. [AMENDED]
Part 43. Agency Companion, Specialized Foster Care, Daily Living Supports, Group Homes, And Community Transition Services
317:30-5-420. [AMENDED]
317:30-5-423. [AMENDED]
Part 51. Habilitation Services
317:30-5-480. [AMENDED]
Part 53. Specialized Foster Care
317:30-5-495. [AMENDED]
Part 55. Respite Care
317:30-5-515. [AMENDED]
Part 59. Homemaker Services
317:30-5-535. [AMENDED]
Part 85. Advantage Program Waiver Services
317:30-5-760. [AMENDED]
Part 101. Targeted Case Management Services for Persons With ~~Mental Retardation~~an Intellectual Disability and/or Related Conditions
317:30-5-1011. [AMENDED]
Part 108. Nutrition Services
317:30-5-1076. [AMENDED]
(Reference APA WF # 11-04A)

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The Oklahoma Health Care Authority Board; Then Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 111-256

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ANALYSIS:
OHCA rules are revised to change language in policy that references "mental retardation" to "intellectual disabilities". Revisions are necessary to comply with Public Law 111-256 (Rosa's Law) that replaces the term mental retardation with intellectual disability, in federal education, health and labor laws.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-40. Home and Community-Based Services Waivers for persons with intellectual disabilities ~~(mental retardation)~~ or certain persons with related conditions

(a) **Introduction to HCBS Waivers for ~~Persons~~persons with intellectual disabilities.** The Medicaid Home and Community-Based Services (HCBS) Waiver programs are authorized in accordance with Section 1915(c) of the Social Security Act.

(1) Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD) operates HCBS Waiver programs for persons with intellectual disabilities ~~(mental retardation)~~ and certain persons with related conditions. Oklahoma Health Care Authority (OHCA), as the State's single Medicaid agency, retains and exercises administrative authority over all HCBS Waiver programs.

(2) Each waiver allows for the provision of specific SoonerCare-compensable services that assist members to reside in the community and avoid institutionalization.

(3) Waiver services:

(A) complement and supplement services available to members through the Medicaid State Plan or other federal, state, or local public programs, as well as informal supports provided by families and communities;

(B) can only be provided to persons who are Medicaid eligible, outside of a nursing facility, hospital, or institution; and

(C) are not intended to replace other services and supports available to members.

(4) Any waiver service must be:

(A) appropriate to the member's needs; and

(B) included in the member's Individual Plan (IP).

(i) The IP:

(I) is developed annually by the member's Personal Support Team, per OAC 340:100-5-52; and

(II) contains detailed descriptions of services provided, documentation of amount and frequency of services, and types of providers to provide services.

(ii) Services are authorized in accordance with OAC 340:100-3-33 and 340:100-3-33.1.

(5) DDSD furnishes case management, targeted case management, and services to members as a Medicaid State Plan service under Section 1915(g)(1) of the Social Security Act in accordance with OAC 317:30-5-1010 through 317:30-5-1012.

(b) **Eligible providers.** All providers must have entered into contractual agreements with OHCA to provide HCBS for

persons with ~~mental retardation~~an intellectual disability or related conditions.

(1) All providers, except pharmacy, specialized medical supplies and durable medical equipment providers must be reviewed by OKDHS DDSD. The review process verifies:

(A) the provider meets the licensure, certification or other standards as specified in the approved HCBS Waiver documents; and

(B) organizations that do not require licensure wishing to provide HCBS services meet program standards, are financially stable and use sound business management practices.

(2) Providers who do not meet the standards in the review process will not be approved for a provider agreement.

(3) Provider agreements with providers that fail to meet programmatic or financial requirements may not be renewed.

(c) **Coverage.** All services must be included in the member's IP. Arrangements for services must be made with the member's case manager.

317:30-3-42. Services in a Nursing Facility (NF)

Nursing facility services are those services furnished pursuant to a physician's orders which require the skills of technical or professional personnel, e.g., registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists or audiologists. This care is provided by nursing facilities licensed under State law to provide, on a regular basis, health related care and services to individuals who do not require hospitalization but whose physical or mental condition requires care and services above the level of room and board which can be made available to them only through a nursing facility.

(1) To be eligible for nursing facility services the individual must:

(A) Require a treatment plan involving the planning and administration of services which require skills of licensed technical or professional personnel that are provided directly or under the supervision of such personnel and are prescribed by the physician;

(B) Have a physical impairment or combination of physical and mental impairments;

(C) Require professional nursing supervision (medication, hygiene and dietary assistance);

(D) Lack the ability to care for self or communicate needs to others; and

(E) Require medical care and treatment in a nursing facility to minimize physical health regression and deterioration. A physician's order and results from a standardized assessment which evaluates type and degree of disability and need for treatment must support the individual's need for NF level of care. Only standardized assessments approved by the OHCA and administered in accordance with Medicaid approved procedures shall be used to make the NF level of care determination.

(2) If the individual experiences mental illness or ~~mental retardation~~an intellectual disability or a related condition, payment cannot be made for services in a nursing facility unless the individual has been assessed through the Preadmission Screening and Resident Review (PASRR) process and the appropriate MR or MI authority has determined that nursing facility services are required. If it is determined that the patient also requires specialized services, the state must provide or arrange for the provision of such services. These determinations must be made prior to the patient's admission to the nursing facility.

(3) Payment cannot be made for an individual who is actively psychotic or capable of imminent harm to self or others (i.e., suicidal or homicidal).

(4) Payment is made to licensed nursing facilities that have agreements with the Authority.

317:30-3-57. General SoonerCare coverage - categorically needy

The following are general SoonerCare coverage guidelines for the categorically needy:

(1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage for inpatient hospital stays as described at OAC 317:30-5-41.

(B) Coverage for members under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or free standing dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

(5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with OHCA.

(6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity Clinic Services.

(10)Outpatient diagnostic x-rays and lab services. Other outpatient services provided to adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.

(11)Medically necessary screening mammography. Additional follow-up mammograms are covered when medically necessary.

(12)Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13)Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for members under 21 years of age to provide access to regularly scheduled

examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and require prior authorization. EPSDT/OHCA Child Health services are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.

(A) Child health screening examinations for eligible children by a medical or osteopathic physician, physician assistant, or advanced practice nurse practitioner.

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a provider.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.

(G) Hearing services as outlined in OAC 317:30-3-65.9.

(H) Prescribed drugs.

(I) Outpatient Psychological services as outlined in OAC 317:30-5-275 through OAC 317:30-5-278.

(J) Inpatient Psychotherapy services and psychological testing as outlined in OAC 317:30-5-95 through OAC 317:30-5-97.

(K) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(L) Inpatient hospital services.

(M) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of SoonerCare.

(N) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for members of child-bearing age, including counseling, insertion of intrauterine device, implantation of subdermal contraceptive device, and sterilization for members 21 years of age and older who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception is not covered. Reversal of sterilization procedures are covered when medically indicated and substantiating documentation is attached to the claim.

(15) Physicians' services whether furnished in the office, the member's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment is made for compensable hospital days described at OAC 317:30-5-41. Office visits for adults are limited to four per month except when in connection with conditions as specified in OAC 317:30-5-9(b).

(16) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services

(B) Optometrists' services

(C) Psychologists' services

(D) Certified Registered Nurse Anesthetists

(E) Certified Nurse Midwives

(F) Advanced Practice Nurses

(G) Anesthesiologist Assistants

(17) Free-standing ambulatory surgery centers.

(18) Prescribed drugs not to exceed a total of six prescriptions with a limit of two brand name prescriptions per month. Exceptions to the six prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) members under the age of 21 years; and

(ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

(B) seven medically necessary generic prescriptions per month in addition to the six covered under the State Plan are allowed for adults receiving services under the 1915(c) Home and Community Based Services Waivers. These additional medically necessary prescriptions beyond the two brand name or thirteen total prescriptions are covered with prior authorization.

(19) Rental and/or purchase of durable medical equipment.

(20) Adaptive equipment, when prior authorized, for members residing in private ICF/MR's.

(21) Dental services for members residing in private ICF/MR's in accordance with the scope of dental services for members under age 21.

(22) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, external breast prostheses and support accessories, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.

(23) Standard medical supplies.

(24) Eyeglasses under EPSDT for members under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.

(25) Blood and blood fractions for members when administered on an outpatient basis.

(26) Inpatient services for members age 65 or older in institutions for mental diseases, limited to those members

whose Medicare, Part A benefits are exhausted for this particular service and/or those members who are not eligible for Medicare services.

(27) Nursing facility services, limited to members preauthorized and approved by OHCA for such care.

(28) Inpatient psychiatric facility admissions for members under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.

(29) Transportation and subsistence (room and board) to and from providers of medical services to meet member's needs (ambulance or bus, etc.), to obtain medical treatment.

(30) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.

(31) Nursing facility services for members under 21 years of age.

(32) Personal care in a member's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of a R.N.

(33) Part A deductible and Part B Medicare Coinsurance and/or deductible.

(34) Home and Community Based Waiver Services for the ~~mentally retarded~~intellectually disabled.

(35) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits are limited to any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.

(36) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adults are covered services based upon the conditions listed in (A)-(D) of this paragraph:

(A) Transplant procedures, except kidney and cornea, must be prior authorized to be compensable.

(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(C) To be compensable under the SoonerCare program, all transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(D) Finally, procedures considered experimental or investigational are not covered.

(37) Home and community-based waiver services for ~~mentally retarded~~intellectually disabled members who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).

(38) Case Management services for the chronically and/or severely mentally ill.

(39) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.

(40) Services delivered in Federally Qualified Health Centers. Payment is made on an encounter basis.

(41) Early Intervention services for children ages 0-3.

(42) Residential Behavior Management in therapeutic foster care setting.

(43) Birthing center services.

(44) Case management services through the Oklahoma Department of Mental Health and Substance Abuse Services.

(45) Home and Community-Based Waiver services for aged or physically disabled members.

(46) Outpatient ambulatory services for members infected with tuberculosis.

(47) Smoking and Tobacco Use Cessation Counseling for children and adults.

(48) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment is made on an encounter basis.

(49) OHCA contracts with designated agents to provide disease state management for individuals diagnosed with certain chronic conditions. Disease state management treatments are based on protocols developed using evidence-based guidelines.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-96.2. Payments definitions

The following words and terms, when used in Sections OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Allowable costs" means costs necessary for the efficient delivery of member care.

"Ancillary Services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology and prescription drugs.

"Border Status" means a placement in a state that does not border Oklahoma but agrees to the same terms and conditions of instate or border facilities.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly subaverage general intellectual functioning.

"Eating Disorders Programs" means acute or intensive residential behavioral, psychiatric and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Professional services" means services of a physician, psychologist or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Psychiatric Residential Treatment Facility (PRTF)" means a non-hospital with an agreement to provide inpatient psychiatric services to individuals under the age of 21.

"Routine Services" means services that are considered routine in the freestanding PRTF setting. Routine services include, but are not limited to:

(A) room and board;

(B) treatment program components;

(C) psychiatric treatment;
(D) professional consultation;
(E) medical management;
(F) crisis intervention;
(G) transportation;
(H) rehabilitative services;
(I) case management;
(J) interpreter services (if applicable);
(K) routine health care for individuals in good physical health; and
(L) laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means acute or intensive residential behavioral, psychiatric and medical services that provide care to a population with a special need or issues such as developmentally disabled, ~~mentally retarded~~intellectually disabled, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These members require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Treatment Program Components" means therapies, activities of daily living and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" refers to the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most members and recognized for program reimbursement. To be considered "customary" for reimbursement, a provider's charges for like services must be imposed on most members regardless of the type of member treated or the party responsible for payment of such services.

PART 9. LONG TERM CARE FACILITIES

317:30-5-122. Levels of care

(a) This rule sets forth the criteria used to determine whether an individual who is seeking SoonerCare payment for long term care services needs services at the level of Skilled Nursing Facility, or Intermediate Care Facility for People with Mental Retardation (ICF/MR). The criteria set forth in this Section must be used when determining level of care for individuals seeking SoonerCare coverage of either facility-based institutional long term care services or Home and Community Based Services (HCBS) Waivers.

(b) The level of care provided by a long term care facility or through a HCBS Waiver is based on the nature of the person's needs and the care, services, and treatment required from appropriately qualified personnel. The level of care review is a determination of an individual's physical, mental and social/emotional status to determine the appropriate level of care required. In addition to level of care requirements, other applicable eligibility criteria must be met.

(1) **Skilled Nursing facility.** When total payments from all other payers are less than the Medicaid rate, payment is made for the Part A coinsurance for Medicare covered skilled nursing facility care for dually eligible, categorically needy individuals.

(2) **Nursing Facility.** Care provided by a nursing facility to patients who require professional nursing supervision and a maximum amount of nonprofessional nursing care due to physical conditions or a combination of physical and mental conditions.

(3) **Intermediate Care Facility for the Mentally Retarded.** Care for persons with ~~mental retardation~~intellectual disabilities or related conditions to provide health and/or habilitative services in a protected residential setting. To qualify for ICF/MR level of care, persons must have substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care. The individual requires assistance, training or supervision to eat, dress, groom, bathe, or use the toilet.

(B) Understanding and use of language. The individual lacks functional communication skills, requires the use of assistive devices to communicate, does not demonstrate an understanding of request or is unable to follow two-step instructions.

(C) Learning. The individual has a valid diagnosis of intellectual disability ~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders.

(D) Mobility. The individual requires the use of assistive devices to be mobile and cannot physically self-evacuate from a building during an emergency without assistive device.

(E) Self-direction. The individual is 7 years old or older and significantly at risk in making age appropriate decisions or an adult who is unable to provide informed consent for medical care, personal safety or for legal, financial, habilitative or residential issues and/or has been declared legally incompetent. The individual is a danger to himself or others without supervision.

(F) Capacity for independent living. The individual who is 7 years old or older and is unable to locate and use a telephone, cross the street safely or understand that it is unsafe to accept rides, food or money from strangers or an adult who lacks basic skills in the areas of shopping, preparing food, housekeeping or paying bills.

PART 39. SKILLED NURSING SERVICES

317:30-5-390. Home and Community-Based Services Waivers for adults with ~~mental retardation~~an intellectual disability or certain adults with related conditions

(a) **Introduction to waiver services.** Each Home and Community-Based Services (HCBS) Waiver that includes services for adults with ~~mental retardation~~an intellectual disability or certain adults with related conditions allows payment for

home health care services as defined in the waiver approved by Centers for Medicare and Medicaid Services.

(1) Home health care services are skilled nursing services provided to a member by a registered nurse or a licensed practical nurse that include:

(A) direct nursing care;

(B) assessment and documentation of health changes;

(C) documentation of significant observations;

(D) maintenance of nursing plans of care;

(E) medication administration;

(F) training of the member's health care needs;

(G) preventive and health care procedures; and

(H) preparing, analyzing, and presenting nursing assessment information regarding the member.

(2) The first 36 visits provided by the home health care agency are covered by the Medicaid State Plan.

(b) **Eligible providers.** Skilled nursing services providers must enter into contractual agreements with the Oklahoma Health Care Authority to provide HCBS for adults with ~~mental retardation~~an intellectual disability or certain adults with related conditions.

(1) Individual providers must be currently licensed in Oklahoma as a:

(A) registered nurse; or

(B) licensed practical nurse.

(2) Agency providers must:

(A) have a current Medicaid HCBS home health care agency contract; or

(B) be certified by Oklahoma State Department of Health as a home health care agency.

PART 41. FAMILY SUPPORT SERVICES

317:30-5-410. Home and Community-Based Services Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

(a) The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~an intellectual disability and certain persons with related conditions that are operated by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD). Each waiver allows payment for family support services as defined in the waiver approved by the Centers for Medicare and Medicaid Services (CMS). Waiver services:

(1) when utilized with services normally covered by SoonerCare, other generic services, and natural supports provide for health and developmental needs of members who otherwise would not be able to live in a home or community setting;

(2) are provided with the goal of promoting independence through strengthening the member's capacity for self-care and self-sufficiency;

(3) are centered on the needs and preferences of the member and support the integration of the member within his/her community; and

(4) do not include room and board. The costs associated with room and board must be met by the member.

(b) The DDSD case manager develops the Individual Plan (IP) and Plan of Care (Plan) per OAC 340:100-5-53. The IP contains descriptions of the services provided, documentation of the amount, frequency and duration of the services, and types of service providers.

(1) Services:

(A) are authorized per OAC 340:100-3-33 and 100-3-33.1.

(B) provided prior to the development of the IP or not included in the IP are not compensable. The Plan may not be backdated;

(C) may be provided on an emergency basis when approved by the area manager or designee. The plan must be revised to reflect the additional services; and

(D) are provided by qualified provider entities contracted with the OHCA.

(2) Members have freedom of choice of providers and in the selection of HCBS or institutional services.

PART 43. AGENCY COMPANION, SPECIALIZED FOSTER CARE, DAILY LIVING SUPPORTS, GROUP HOMES, AND COMMUNITY TRANSITION SERVICES

317:30-5-420. Home and Community-Based Services Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~an intellectual disability and certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD). The Community Waiver and Homeward Bound Waiver allow payment for residential supports as defined in the waiver approved by the Centers for Medicare and Medicaid Services (CMS).

317:30-5-423. Coverage limitations

(a) Coverage limitations for residential supports for members with ~~mental retardation~~an intellectual disability are:

(1) Description: agency companion services (ACS); Unit: one day; Limitation: 366 units per year;

(2) Description: specialized foster care (SFC); Unit: one day; Limitation: 366 units per year;

(3) Description: daily living supports (DLS); Unit: one day; Limitation: 366 units per year; and

(4) Description: group home services; Unit: one day; Limitation: 366 units per year.

(b) Members may not receive ACS, SFC, DLS and group home services at the same time.

(c) Community transition services (CTS) are limited to $2,400 per eligible member.

(1) CTS is limited to one transition over the member's lifetime. If the member's situation changes after receipt of CTS and hospitalization or readmission to an intermediate care facility for the mentally retarded (ICF/MR) is necessary, CTS is not authorized upon transition back into the community.

(2) Members moving into a group home, SFC, or ACS arrangement in the companion's home are not eligible to receive CTS.

PART 51. HABILITATION SERVICES

317:30-5-480. Home and Community-Based Services for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~intellectual disabilities or certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD). Each waiver allows Medicaid compensable services provided to persons who are:

(1) medically and financially eligible; and

(2) not covered through the OHCA's SoonerCare program.

PART 53. SPECIALIZED FOSTER CARE

317:30-5-495. Home and Community-Based Services Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

(a) **Introduction to waiver services.** The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions that are operated by Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD). The Community Waiver and Homeward Bound Waiver allow payment for specialized foster care (SFC), also known as specialized family care, as defined in the waiver approved by Centers for Medicare and Medicaid Services.

(b) **Eligible providers.** All SFC providers must:

(1) enter into contractual agreements with the OHCA to provide HCBS for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions;

(2) have an approved home profile per OAC 317:40-5-40;

(3) complete training per OAC 340:100-3-38;

(4) have the ability to implement the member's Individual Plan (IP); and

(5) be emotionally and financially stable, in good health, and of reputable character.

PART 55. RESPITE CARE

317:30-5-515. Home and Community-Based Services Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

The Oklahoma Health Care Authority administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division. Each waiver allows payment for respite care as defined in the waiver approved by the Centers for Medicare and Medicaid Services.

PART 59. HOMEMAKER SERVICES

317:30-5-535. Home and Community-Based Services Waiver for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

(a) **Introduction to waiver services.** The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division. Each waiver allows payment for homemaker or homemaker respite services as defined in the waiver approved by the Centers for Medicare and Medicaid Services.

(b) **Eligible providers.** All homemaker services providers must enter into contractual agreements with the OHCA to provide HCBS for persons with ~~mental retardation~~an intellectual disability or related conditions.

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-760. ADvantage program

The ADvantage Program is a Medicaid Home and Community Based Services (HCBS) Waiver used to finance noninstitutional long-term care services through Oklahoma's Medicaid program for elderly and disabled individuals. To receive ADvantage Program services, individuals must meet the nursing facility (NF) level of care (LOC) criteria, be age 65 years or older, or age 21 or older if physically disabled and not developmentally disabled, or if developmentally disabled and between the ages of 21 and 65, not have ~~mental retardation~~an intellectual disability or a cognitive impairment related to the developmental disability. ADvantage Program ~~recipients~~members must be Medicaid eligible. The number of ~~recipients~~members of ADvantage services is limited.

PART 101. TARGETED CASE MANAGEMENT SERVICES FOR PERSONS WITH ~~MENTAL RETARDATION~~AN INTELLECTUAL DISABILITY AND/OR RELATED CONDITIONS

317:30-5-1011. Coverage by category

Payment is made for targeted case management service as set forth in this Section.

(1) **Adults.** Payment is made for services to persons with ~~mental retardation~~an intellectual disability and/or related conditions as follows:

(A) The target group for Developmental Disabilities Services Division Targeted Case Management (DDSDTCM) services are Medicaid eligible individuals:

(i) served by the Home and Community Based Waivers operated by the Department of Human Services/Developmental Disabilities Services Division (DHS/DDSD); or

(ii) residing in institutions who:

(I) have requested Home and Community Based Waiver services operated by DHS/DDSD, and

(II) receive targeted case management services during a transition period not to exceed 180 consecutive days immediately prior to entering the Waiver; or

(iii) who are being assessed for admission to the Home and Community Based Waiver operated by DHS/DDSD.

(B) Targeted case management services may be provided when the client, the client's family as appropriate, the client's legal representative and case manager have worked together to achieve a plan.

(2) **Children.** Services for children are the same as for adults.

(3) **Individuals eligible for Part B of Medicare.** Case Management Services provided to Medicare eligible recipients are filed directly with the fiscal agent.

PART 108. NUTRITION SERVICES

317:30-5-1076. Coverage by category

Payment is made for Nutritional Services as set forth in this section.

(1) **Adults.** Payment is made for six hours of medically necessary nutritional counseling per year by a licensed registered dietician. All services must be prescribed by a physician, physician assistant, advanced practice nurse, or nurse midwife and be face to face encounters between a licensed registered dietitian and the member. Services must be expressly for diagnosing, treating or preventing, or minimizing the effects of illness. Nutritional services for the treatment of obesity is not covered unless there is documentation that the obesity is a contributing factor in another illness.

(2) **Children.** Payment is made for medically necessary nutritional counseling as described above for adults. Nutritional services for the treatment of obesity may be covered for children as part of the EPSDT benefit. Additional services which are deemed medically necessary and allowable under federal regulations may be covered by the EPSDT benefit found at 317:30-3-65 and 317:30-3-65.11.

(3) **Home and Community Based Waiver Services for the ~~Mentally Retarded~~ Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the ~~Mentally Retarded~~intellectually disabled program must have a separate contract with OHCA to provide Nutrition Services under this program. All services are specified in the individual's plan of care.

(4) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Services which are not covered under Medicare should be billed directly to OHCA.

(5) **Obstetrical patients.** Payment is made for a maximum of six hours of medically necessary nutritional counseling per year by a licensed registered dietitian for members at risk for or those who have been recently diagnosed with gestational diabetes. The initial consultation may be in a group setting for a maximum of two hours of class time. Thereafter, four hours of nutritional counseling by a licensed registered dietitian may be provided to the individual if deemed medically necessary, which may include a post-partum visit, typically done at 6 weeks after delivery. All services must be prescribed by a physician, physician assistant, advanced practice nurse or a nurse midwife and be face-to-face between a licensed registered dietitian and the member(s). Services must be solely for the prevention, diagnosis, or treatment of gestational diabetes.

[OAR Docket #12-593; filed 5-10-12]

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

[OAR Docket #12-621]

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Agency policy on anesthesia is revised to allow reimbursement for a pain management procedure when performed during an anesthesia session.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-7. Anesthesia

(a) **Procedure codes.** Anesthesia codes from the Physicians' Current Procedural Terminology should be used. Payment is made only for the major procedure during an operative session.

(b) **Modifiers.** All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied.

(c) **Qualifying circumstances.** Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. The appropriate modifiers should be added to these codes. Additional payment can be made for extremes of age, total body hypothermia, and controlled hypertension.

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

(e) **Anesthesia with Blood Gas Analysis.** Blood gas analysis is part of anesthesia service. Payment for anesthesia includes payment for blood gas analysis.

(f) **Steroid injections.** Steroid injections administered by an anesthesiologist are covered as nerve block. The appropriate CPT procedure code is used to bill services.

(g) **Local anesthesia.** If local anesthesia is administered by attending surgeon, payment is included in the global surgery fee, except for spinal or epidural anesthesia in conjunction with childbirth.

(h) **Stand by anesthesia.** This is not covered unless the physician is actually in the operating room administering medication, etc. If this is indicated, claim will be processed as if anesthesia was given. Use appropriate anesthesia code.

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

(j) **Central venous catheter and anesthesia.** Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.

(k) **Pain management.** Pain management procedures performed during the anesthesia session will be covered when medically necessary to adequately control anticipated post-operative pain.

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

[OAR Docket #12-591]

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Part 49. Family Planning Centers
317:30-5-465. [REVOKED]
317:30-5-466. [REVOKED]
317:30-5-467. [REVOKED]
Part 75. Federally Qualified Health Centers
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ANALYSIS:
OHCA rules for the SoonerPlan Family Planning Program are revised to remove references to the Family Planning Waiver. Section 2303 of the Patient Protection and Affordable Care Act allows individuals receiving Family Planning Waiver services to receive those same services plus additional family planning and family planning related services under the Title XIX State Plan rather than a waiver program. In addition to a broader service package, the State Plan option allows a more efficient way of making future changes to the SoonerPlan program. If approved, the rule change will allow over 32,000 SoonerPlan members and future members to receive the enhanced package of State Plan Family Planning services. The rule revision also includes the removal of language relating to family planning centers, clarification of eligibility rules and other minor policy corrections.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-12. Family planning

~~(a) Pregnancy tests are covered.~~
~~(b) Reverse vasectomy is not covered.~~
~~(c) Reversal of sterilization procedures for the purpose of conception are not covered.~~
(a) **Adults.** Payment is made for the following family planning services:
(1) physical examination to determine the general health of the member and most suitable method of contraception;
(2) complete general history of the member and pertinent history of immediate family members;
(3) laboratory services for the determination of pregnancy, detection of certain sexually transmitted infections and detection of cancerous or pre-cancerous conditions of the reproductive anatomy;
(4) education and counseling regarding issues related to reproduction and contraception;
(5) annual supply of chosen contraceptive;
(6) insertion and removal of contraceptive devices;
(7) vasectomy and Tubal Ligation procedures; and
(8) additional visits for members experiencing difficulty with a particular contraceptive method or having concerns related to their reproductive health.
(b) **Children.** Payment is made for children as set forth in this Section for adults. However payment cannot be made for the sterilization of persons under the age of 21.
(c) **SoonerPlan Members.** Non-pregnant women and men ages 19 and older not enrolled in SoonerCare may apply for the SoonerPlan program. Eligible members receive family planning services set forth in this Section as well as family planning related services (vaccinations for the prevention of certain sexually transmitted infections and male exams). SoonerPlan eligibility requirements are found at OAC 317:35-7-48.
(d) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Claims for services which are not covered by Medicare should be filed directly with the Fiscal Agent for payment within the scope of the program.

PART 49. FAMILY PLANNING CENTERS [REVOKED]

317:30-5-465. Eligible providers [REVOKED]

~~In order to be eligible for participation the family planning center must meet the Oklahoma State Health Department Standards and Criteria for Family Planning Centers. The center must declare whether they will bill independently or through a computer billing arrangement with the Oklahoma State Department of Health.~~

317:30-5-466. Coverage by category [REVOKED]

~~Payment is made to family planning centers as set forth in this Section.~~
~~(1) **Adults.** Payment is made for adults on an encounter basis. Each encounter is all inclusive of the following and payment includes all services provided:~~
~~(A) **Initial examination services.** Initial examination services that are provided to new family planning patients include:~~
~~(i) Complete physical examination including assessment of height, weight, blood pressure, thyroid, extremities, heart, lungs, breasts, abdomen, pelvic examination, including visualization of the cervix, external genitalia, bimanual exam, and rectal exam as indicated. (Male clients receive examination of genitals and rectum including palpation of the prostate in lieu of pelvic exam given females.)~~
~~(ii) Complete general history of patient and pertinent history of immediate family members. This general history addresses allergies, immunizations, past illnesses, hospitalizations, surgery, review of systems, use of alcohol, tobacco and drugs. Reproductive function history in female patients includes menstrual history, sexual activity, sexually transmitted diseases, contraceptive use, pregnancies, and in utero exposure to DES. Male~~

~~reproductive general history includes sexual activity, sexually transmitted diseases, fertility, and exposure to DES.~~

~~(iii) Laboratory services to include hematocrit, dip stick urinalysis, pap smear, gonorrhea culture, serologic test for syphilis and rubella screening if indicated.~~

~~(iv) Education and counseling are offered to provide information regarding reproductive anatomy, range of clinic services, risks benefits and side effects of various methods of contraception, and health promotion/disease prevention topics as needed.~~

~~(v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.~~

~~(vi) Treatment of minor gynecological problems, infections, and other conditions.~~

~~(vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.~~

~~(B) **Annual examination services.** Annual examination services are provided to continuing patients to include:~~

~~(i) Annual update physical examination to include height, weight, blood pressure, extremities, and examination of breasts and pelvic organs. If required, a complete physical examination may be provided as described under the initial visit services above.~~

~~(ii) A medical history update is taken to update the general history and includes noting the patient's adaptation to and correct use of contraceptive method, menstrual history, specific warning signs and other side effects related to the contraceptive method. If indicated, a complete general history of the patient will be taken at the annual visit.~~

~~(iii) Laboratory services to include pap smear, gonorrhea culture, hematocrit, and serologic test for syphilis.~~

~~(iv) Education and counseling regarding specific problems, risks and side effects of the method in use.~~

~~(v) Provision for an annual supply of chosen contraceptive method to include, but not limited to, injections (administration and medication), oral contraceptive, IUD, diaphragm, foam, condoms or natural family planning.~~

~~(vi) Treatment of minor gynecological problems, infections, and other conditions.~~

~~(vii) Referral to appropriate providers for problems or conditions which are beyond the scope of the clinic to treat.~~

~~(C) **Encounter visits.**~~

~~(i) Encounter visits covers services provided to patients which are not part of the initial/annual examinations. This may include:~~

~~(I) A follow up visit for all new patients to insure they understand and are experiencing no problems with their particular contraceptive method.~~

~~(II) A scheduled revisit for a new or continuing patient who may have conditions which places the patient in a high risk category requiring more intensive medical management as outlined in the program medical protocol.~~

~~(ii) Encounter visits may also be scheduled at the request of the patient as they are encouraged to return to the clinic at any time they experience difficulty with a particular contraceptive method or have concerns related to their reproductive health. Pregnancy diagnosis and counseling services are also provided under this category.~~

~~(D) **Vasectomy.** For vasectomies, payment will be made as an all-inclusive rate for all services provided in connection with the surgery. Claims must have the Federally mandated consent form properly completed and attached.~~

~~(E) **Tubal ligations.** For tubal ligations, payment will be made as an all-inclusive rate for the cost of the surgeon, anesthesiologist, pre and post-operative care and outpatient surgery facility. Claims must have the properly completed Federally mandated consent form attached.~~

~~(2) **Children.** Payment is made for children as set forth for adults. However payment cannot be made for the sterilization of persons under the age of 21.~~

~~(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. Claims for services which are not covered by Medicare should be filed directly with the Fiscal Agent for payment within the scope of the program.~~

317:30-5-467. Coverage limitations [REVOKED]

~~(a) Sterilizations require proper consent form and are not compensable for patients under 21 years of age.~~

~~(b) The following coverage limitations apply to services provided by family planning centers:~~

~~(1) Service: Initial Examination; Unit: Completed Examination and Services; Limitation: one initial examination.~~

~~(2) Service: Annual; Unit: Completed Examination and Services; Limitation: one annual examination.~~

~~(3) Service: Encounter Visit; Unit: Completed Examination and Services; Limitation: one per day.~~

~~(4) Service: Vasectomy; Unit: Completed Examination and Services; Limitation: one each (required consent restricted to persons age 21 and over, at time consent form is signed).~~

~~(5) Service: Tubal Ligation; Unit: Completed Examination and Services; Limitation: one each (required consent restricted to persons age 21 and over, at time consent form is signed).~~

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-664.5. Health Center encounter exclusions and limitations

(a) Service limitations governing the provision of all services apply pursuant to OAC 317:30. Excluded from the definition of reimbursable encounter core services are:

(1) Services provided by an independently CLIA certified and enrolled laboratory.

(2) Radiology services including nuclear medicine and diagnostic ultrasound services.

(3) Venipuncture for lab tests is considered part of the encounter and cannot be billed separately. When a member is seen at the clinic for a lab test only, use the appropriate CPT code. A visit for "lab test only" is not considered a Center encounter.

(4) Durable medical equipment or medical supplies not generally provided during the course of a Center visit such as diabetic supplies. However, gauze, band-aids, or other disposable products used during an office visit are considered as part of the cost of an encounter and cannot be billed separately under SoonerCare.

(5) Supplies and materials that are administered to the member are considered a part of the physician's or other health care practitioner's service.

(6) Drugs or medication treatments provided during a clinic visit are included in the encounter rate. For example, a member has come into the Center with high blood pressure and is treated at the Center with a hypertensive drug or drug samples provided to the Center free of charge are not reimbursable services and are included in the cost of an encounter. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy.

(7) Administrative medical examinations and report services;

(8) Emergency services including delivery for pregnant members that are eligible under the Non-Qualified (ineligible) provisions of OAC 317:35-5-25;

(9) ~~Family~~SoonerPlan family planning services ~~provided to individuals enrolled in the Family Planning Waiver~~;

(10) Optometry and podiatric services other than for dual eligible for Part B of Medicare;

(11) Other services that are not defined in this rule or the State Plan.

(b) In addition, the following limitations and requirements apply to services provided by Health Centers:

(1) Physician services are not covered in a hospital.

(2) Behavioral health case management and psychosocial rehabilitation services are limited to Health Centers enrolled under the provider requirements in OAC 317:30-5-240, and 317:30-5-595 and contracted with OHCA as an outpatient behavioral health agency.

PART 112. PUBLIC HEALTH CLINIC SERVICES

317:30-5-1154. CHD/CCHD services/limitations

CHD/CCHD service limitations are:

(1) Child Guidance services (see OAC 317:30-3-65 through OAC 317:30-3-5-65.11 for specifics regarding program requirements).

(2) Dental services [OAC 317:30-3-65.4(7)].

(3) Early Periodic Screening, Diagnosis, and Treatment services (including blood lead testing and follow-up services) (see OAC 317:30-3-65 through OAC 30-3-65.11 for specific coverage).

(4) Environmental investigations.

(5) Family Planning ~~services~~ and ~~Family Planning Waiver Services~~SoonerPlan Family Planning services (see ~~OAC 317:30-5-465 through OAC 317:30-5-467~~OAC 317:30-5-12 for specific coverage ~~and limitations~~guidelines).

(6) Immunizations (adult and child).

(7) Blood lead testing (see OAC 317:30-3-65.4 for specific coverage).

(8) Newborn hearing screening.

(9) Newborn metabolic screening.

(10) Maternity services (see OAC 317:30-5-22 for specific coverage).

(11) Public health nursing services.

(12) Tuberculosis case management and directly observed therapy.

(13) Laboratory services.

(14) Targeted case management.

[OAR Docket #12-591; filed 5-10-12]

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

[OAR Docket #12-611]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-123. [AMENDED]
Part 51. Habilitation Services
317:30-5-482. [AMENDED]
Part 101. Targeted Case Management Services for Persons With ~~Mental Retardation~~ Intellectual Disability and/or Related Conditions
317:30-5-1012. [AMENDED]
317:30-5-1014. [AMENDED]
(Reference APA WF # 11-32A)

AUTHORITY:

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

Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)

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ANALYSIS:
Permanent rule revisions are proposed by the OKDHS Developmental Disability Services Division (DDSD) pertaining to clarification of policy for the termination of Agency Companion providers based on certain background check information and to provide clarification on the limits of background search information for Specialized Foster Care providers regarding involvement in a court action. Additionally policy is revised to require architectural modification contractors to provide evidence of a lead based paint safety certificate; the addition of Adult Day Services for members in the Homeward Bound Waiver; Targeted Case Management to be billed weekly rather than monthly; removal of the Physical Status Review score as one of criteria for determining the enhanced rate for Community Based Group services and Job Coaching Services, and removal of Adult Day Services as an option to the member's required employment hours. Other minor policy revisions are also included.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILIIES

317:30-5-123. Patient certification for long term care

(a) **Medical eligibility.** Initial approval of medical eligibility for long-term care is determined by the Oklahoma Department of Human Services (OKDHS) area nurse, or nurse designee. The certification is obtained by the facility at the time of admission.

(1) **Pre-admission screening.** Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) for individuals with mental illness and ~~mental retardation~~intellectual disability. PASRR applies to the screening or reviewing of all individuals for mental illness or ~~mental retardation~~intellectual disability or related conditions who apply to or reside in Title XIX certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The nursing facility (NF) must independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. Nursing facilities which inappropriately admit a person without a PASRR Screen are subject to recoupment of funds. PASRR is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR).

(2) **PASRR Level I screen.**

(A) Form ~~LTC-300R~~LTC-300, Nursing Facility Level of Care Assessment, must be completed by an authorized NF official or designee. An authorized NF official or designee must consist of one of the following:

(i) The nursing facility administrator or co-administrator;

(ii) A licensed nurse, social service director, or social worker from the nursing facility; or

(iii) A licensed nurse, social service director, or social worker from the hospital.

(B) Prior to admission, the authorized NF official must evaluate the properly completed OHCA Form ~~LTC-300R~~LTC-300 and the Minimum Data Set (MDS), if available. Any other readily available medical and social information is also used to determine if there currently exists any indication of mental illness (MI), ~~mental retardation (MR),~~intellectual disability or other related condition, or if such condition existed in the applicant's past history. Form ~~LTC-300R~~LTC-300 constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II Assessment is necessary prior to allowing the patient to be admitted. The NF is also responsible for consulting with the Level of Care Evaluation Unit (LOCEU) regarding any ~~MI/MR~~mental illness/intellectual disability related condition information that becomes known either from completion of the MDS or throughout the resident's stay.

(C) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from Form ~~LTC-300R~~LTC-300, Section E, will require the nursing facility to contact the LOCEU for a consultation to determine if a Level II

Assessment is needed. If there is any question as to whether or not there is evidence of ~~MI, MR,~~ mental illness, intellectual disability or related condition, LOCEU should be contacted prior to admission. The original Form ~~LTC-300R~~LTC-300 must be submitted by mail to the LOCEU within 10 days of the resident admission. SoonerCare payment may not be made for a resident whose ~~LTC-300R~~LTC-300 requirements have not been satisfied in a timely manner.

(D) Upon receipt and review of the Form ~~LTC-300R~~LTC-300, the LOCEU may, in coordination with the OKDHS area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II Assessment is not required, the process of determining medical eligibility continues. If a Level II is required, a medical decision is not made until the results of the Level II Assessment are known.

(3) **Level II Assessment for PASRR.**

(A) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR Assessment.

(i) The patient has no current indication of mental illness or ~~mental retardation~~intellectual disability or other related condition and there is no history of such condition in the patient's past.

(ii) The patient does not have a diagnosis of ~~mental retardation~~intellectual disability or related condition.

(iii) An individual may be admitted to an NF if he/she has indications of mental illness or ~~mental retardation~~intellectual disability or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (Exempted Hospital Discharge). If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all three of the following conditions are met:

(I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(II) The individual must require NF services for the condition for which he/she received care in the hospital; and

(III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The NF will be required to furnish this documentation to OHCA upon request.

(B) If the patient has current indications of mental illness or ~~mental retardation~~ intellectual disability or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted for consultation to determine if a Level II PASRR Assessment must be performed. Results of any Level II PASRR Assessment ordered must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(C) The OHCA, LOCEU, authorizes Advance Group Determinations for the ~~MI and MR~~mental illness and intellectual disability Authorities in the following categories listed in (i) through (iii) of this subparagraph. Preliminary screening by the LOCEU may indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

(i) **Provisional admission in cases of delirium.** Any person with mental illness, ~~mental retardation~~intellectual disability or related condition that is not a danger to self and or others, may be admitted to a Title XIX certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(I) A Level II evaluation is completed immediately after the delirium clears. The LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(II) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(ii) **Provisional admission in emergency situations.** Any person with a mental illness, ~~mental retardation~~intellectual disability or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility for a period not to exceed seven days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. The LOCEU must be provided with written documentation from OKDHS Adult Protective Services which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(iii) **Respite care admission.** Any person with mental illness, ~~mental retardation~~intellectual disability or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility to provide respite to in-home caregivers to whom the individual is

expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

(II) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(4) **Resident Review.**

(A) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as ~~MR or MI~~intellectally disaled or mentally ill. A new condition of ~~MR or MI~~intellectual disability or mental illness must be referred to LOCEU by the NF for determination of the need for the Level II Assessment. The facility's failure to refer such individuals for a Level II Assessment may result in recoupment of funds.

(B) A Level II Resident Review may be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness with no primary diagnosis of dementia on his or her pre-admission Level II, to determine whether, because of the resident's physical and mental condition, the resident requires the level of services provided by a nursing facility and whether the resident requires specialized services.

(C) A significant change in a resident's mental condition could trigger a Level II Resident Review. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to notify the LOCEU of the need to conduct a resident review.

(5) **Results of Level II Pre-Admission Assessment and Resident Review.** Through contractual arrangements between the OHCA and the ~~MI/MR~~mental illness/intellectual disability authorities, individualized assessments are conducted and findings presented in written evaluations. The evaluations determine if nursing facility services are needed, if specialized services or less than specialized services are needed, and if the individual meets the federal PASRR definition of mental illness or ~~mental retardation~~intellectual disability or related conditions. Evaluations are delivered to the LOCEU to process formal, written notification to patient, guardian, NF and interested parties.

(6) **Readmissions, and interfacility transfers.** The Preadmission Screening process does not apply to readmission of an individual to an NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. Inter-facility transfers are also subject to preadmission screening. In the case of transfer of a resident from an NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent ~~LTC-300R~~LTC-300 and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated ~~LTC-300R~~LTC-300 that reflects the resident's current status to LOCEU within 10 days of the transfer. Failure to do so could result in possible recoupment of funds. LOCEU should also be contacted prior to admitting out-of-state NF applicants with mental illness or ~~mental retardation~~intellectual disability or related condition, so that PASRR needs can be ascertained. Any PASRR evaluations previously completed by the referring state should be forwarded to LOCEU as part of this PASRR consultation.

(7) **PASRR appeals process.**

(A) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county OKDHS office to discuss a hearing. Forms for requesting a fair hearing (OKDHS Form 13MP001E, Request for a Fair Hearing), as well as assistance in completing the forms, can be obtained at the local county OKDHS office. Any request for a hearing must be made no later than 20 days following the date of written notice. Appeals of these decisions are available under OAC 317:2-1-2. All individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(B) When the individual is found to experience ~~MI, MR,~~mental illness, intellectual disability or related condition through the Level II Assessment, the PASRR determination made by the ~~MR/MI~~intellectual disability/mental illness authorities cannot be countermanded by the Oklahoma Health Care Authority, either in the claims process or through other utilization control/review processes, or by the Oklahoma State Department of Health. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the ~~MR/MI~~ intellectual disability /mental illness authorities.

(b) **Determination of Title XIX medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the OKDHS area nurse, or nurse designee. The procedures for determining Nursing

Facility (NF) program medical eligibility are found in OAC 317:35-19. Determination of ICF/MR medical eligibility is made by LOCEU. The procedures for obtaining and submitting information required for a decision are outlined below.

(1) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/MR care is based on results of a current comprehensive psychological evaluation by a licensed psychologist or state staff psychologist, documentation of ~~MR~~intellectual disability or related condition prior to age 22, and the need for active treatment according to federal standards. Pre-approval is made by LOCEU analysts.

(2) **Medical eligibility for ICF/MR services.** Within ~~10~~30 calendar days after services begin, the facility must submit the original of the Nursing Facility Level of Care Assessment ~~(Form LTC-300R)~~(Form LTC-300) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for ICF/MR level of care, and a statement that the member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS.

(3) **Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship to disability has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances, LOCEU will render a decision on categorical relationship using the same definition as used by the Social Security Administration (SSA). A follow-up is required by the OKDHS worker with SSA to be sure that their disability decision agrees with the decision of LOCEU.

PART 51. HABILITATION SERVICES

317:30-5-482. Description of services

Habilitation services include the services identified in (1) through (15). Providers of any habilitation service must have an applicable agreement with the Oklahoma Health Care Authority (OHCA) to provide Developmental Disabilities Services Division (DDSD) Home and Community Based Services (HCBS).

(1) **Dental services.** Dental services are provided per OAC 317:40-5-112.

(A) **Minimum qualifications.** Providers of dental services must have non-restrictive licensure to practice dentistry in Oklahoma by the Board of Governors of Registered Dentists of Oklahoma.

(B) **Description of services.** Dental services include services for maintenance or improvement of dental health as well as relief of pain and infection. These services may include:

(i) oral examination;

(ii) bite-wing x-rays;

(iii) prophylaxis;

(iv) topical fluoride treatment;

(v) development of a sequenced treatment plan that prioritizes:

(I) elimination of pain;

(II) adequate oral hygiene; and

(III) restoration or improved ability to chew;

(vi) routine training of member or primary caregiver regarding oral hygiene; and

(vii) preventive restorative, replacement and repair services to achieve or restore functionality are provided after appropriate review if applicable per OAC 317:40-5-112.

(C) **Coverage limitations.** Coverage of dental services is specified in the member's Individual Plan (IP), in accordance with applicable Waiver limits. Dental services are not authorized when recommended for cosmetic purposes.

(2) **Nutrition services.** Nutrition Services are provided per OAC 317:40-5-102.

(3) **Occupational therapy services.**

(A) **Minimum qualifications.** Occupational therapists and occupational therapy assistants must have current non-restrictive licensure by the Oklahoma State Board of Medical Licensure and Supervision. Occupational therapy assistants must be employed by the occupational therapist.

(B) **Description of services.** Occupational therapy services include evaluation, treatment, and consultation in leisure management, daily living skills, sensory motor, perceptual motor, and mealtime assistance. Occupational therapy services may include the use of occupational therapy assistants, within the limits of their practice.

(i) Services are:

(I) intended to help the member achieve greater independence to reside and participate in the community; and

(II) rendered in any community setting as specified in the member's IP. The IP must include a ~~physician's~~practitioner's prescription.

(ii) ~~For purposes of this Section, a physician is defined as all licensed medical and osteopathic physicians, and physician assistants in accordance with the rules and regulations covering the OHCA's SoonerCare program~~For purposes of this Section, a practitioner is defined as all medical and osteopathic physicians, physician assistants and other licensed professionals with prescriptive authority to order occupational therapy services in accordance with the rules and regulations governing the SoonerCare program.

(iii) The provision of services includes written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to the individual occupational therapist for direct services or for services provided by a qualified occupational ~~therapy~~therapist assistant within their employment. Payment is made in 15-minute units, with a limit of 480 units per Plan of Care year. Payment is not allowed solely for written reports or record documentation.

(4) **Physical therapy services.**

(A) **Minimum qualifications.** Physical therapists and physical ~~therapy~~therapist assistants must have a current non-restrictive licensure with the Oklahoma State Board of Medical Licensure and Supervision. The physical ~~therapy~~therapist assistant must be employed by the physical therapist.

(B) **Description of services.** Physical therapy services include evaluation, treatment, and consultation in locomotion or mobility and skeletal and muscular conditioning to maximize the member's mobility and skeletal/muscular well-being. Physical therapy services may include the use of physical ~~therapy~~therapist assistants, within the limits of their practice.

(i) Services are intended to help the member achieve greater independence to reside and participate in the community. Services are provided in any community setting as specified in the member's IP. The IP must include a ~~physician's~~practitioner's prescription.

(ii) For purposes of this Section, a ~~physician~~practitioner is defined as all licensed medical and osteopathic physicians, and physician assistants in accordance with the rules and regulations covering the OHCA's SoonerCare program.

(iii) The provision of services includes written report or record documentation in the member's record, as required.

(C) **Coverage limitations.** Payment is made for compensable services to individual physical therapists for direct services or for services provided by a qualified physical ~~therapy~~therapist assistant within their employment. Payment is made in 15-minute units with a limit of 480 units per Plan of Care year. Payment is not allowed solely for written reports or record documentation.

(5) **Psychological services.**

(A) **Minimum qualifications.** Qualification as a provider of psychological services requires non-restrictive licensure as a psychologist by the Oklahoma Psychologist Board of Examiners, or licensing board in the state in which service is provided.

(B) **Description of services.** Psychological services include evaluation, psychotherapy, consultation, and behavioral treatment. Service is provided in any community setting as specified in the member's IP.

(i) Services are:

(I) intended to maximize a member's psychological and behavioral well-being; and

(II) provided in individual and group, six person maximum, formats.

(ii) A minimum of 15 minutes for each individual encounter and 15 minutes for each group encounter and record documentation of each treatment session is included and required.

(C) **Coverage limitations.**

(i) Limitations for psychological services are:

(I) Description: Psychotherapy services and behavior treatment services (individual): Unit: 15 minutes; and

(II) Description: Cognitive/behavioral treatment (group): Unit: 15 minutes.

(ii) Psychological services are authorized for a period not to exceed six months.

(I) Initial authorization is through the Developmental Disabilities Services Division (DDSD) case manager, with review and approval by the DDSD case management supervisor.

(II) Initial authorization must not exceed 192 units (48 hours of service).

(III) Monthly progress notes must include a statement of hours and type of service provided, and an empirical measure of member status as it relates to each objective in the member's IP.

(IV) If progress notes are not submitted to the DDSD case manager for each month of service provision, authorization for payment must be withdrawn until such time as progress notes are completed.

(iii) Treatment extensions may be authorized by the DDSD area manager based upon evidence of continued need and effectiveness of treatment.

(I) Evidence of continued need of treatment, treatment effectiveness, or both, is submitted by the provider to the DDSD case manager and must include, at a minimum, completion of the Service Utilization and Evaluation protocol.

(II) When revising a protective intervention plan (PIP) to accommodate recommendations of a required committee review or an Oklahoma Department of Human Services (OKDHS) audit, the provider may bill for only one revision. The time for preparing the revision must be clearly documented and must not exceed four hours.

(III) Treatment extensions must not exceed 24 hours (96 units) of service per request.

(iv) The provider must develop, implement, evaluate, and revise the PIP corresponding to the relevant goals and objectives identified in the member's IP.

(v) No more than 12 hours (48 units) may be billed for the preparation of a PIP. Any clinical document must be prepared within 45 days of the request. Further, if the document is not prepared, payments are suspended until the requested document is provided.

(vi) Psychological technicians may provide up to 140 billable hours (560 units) of service per month to members.

(vii) The psychologist must maintain a record of all billable services provided by a psychological technician.

(6) **Psychiatric services.**

(A) **Minimum qualifications.** Qualification as a provider of psychiatric services requires a non-restrictive license to practice medicine in Oklahoma. Certification by the Board of Psychiatry and Neurology or satisfactory completion of an approved residency program in psychiatry is required.

(B) **Description of services.** Psychiatric services include outpatient evaluation, psychotherapy, and medication and prescription management and consultation provided to members who are eligible. Services are provided in any community setting as specified in the member's IP.

(i) Services are intended to contribute to the member's psychological well-being.

(ii) A minimum of 30 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 30 minutes, with a limit of 200 units per Plan of Care year.

(7) **Speech/language services.**

(A) **Minimum qualifications.** Qualification as a provider of speech/language services requires non-restrictive licensure as a speech/language pathologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Speech therapy includes evaluation, treatment, and consultation in communication and oral motor/feeding activities provided to members who are eligible. Services are intended to maximize the member's community living skills and may be provided in any community setting as specified in the member's IP. The IP must include a ~~physician's~~practitioner's prescription.

(i) For purposes of this Section, a ~~physician~~practitioner is defined as all licensed medical and osteopathic physicians, and physician assistants and other licensed professionals with prescriptive authority to order speech/language services in accordance with rules and regulations covering the OHCA's SoonerCare program.

(ii) A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** A unit is 15 minutes, with a limit of 288 units per Plan of Care year.

(8) **Habilitation training specialist (HTS) services.**

(A) **Minimum qualifications.** Providers must complete the OKDHS DDSD sanctioned training curriculum. Residential habilitation providers:

(i) are at least 18 years of age;

(ii) are specifically trained to meet the unique needs of members;

(iii) have not been convicted of, pled guilty, or pled nolo contendere to misdemeanor assault and battery or a felony per Section 1025.2 of Title 56 of the Oklahoma Statutes (56 O.S.§ 1025.2), unless a waiver is granted per 56 O.S. § 1025.2; and

(iv) receive supervision and oversight from a contracted agency staff with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** HTS services include services to support the member's self-care, daily living, and adaptive and leisure skills needed to reside successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being.

(i) Payment will not be made for:

(I) routine care and supervision that is normally provided by family; or

(II) services furnished to a member by a person who is legally responsible per OAC 340:100-3-33.2.

(ii) Family members who provide HTS services must meet the same standards as providers who are unrelated to the member. HTS staff residing in the same household as the member may not provide services in excess of 40 hours per week. Members who require more than 40 hours per week of HTS must use staff members who do not reside in the household and are employed by the member's chosen provider agency to deliver the balance of any necessary support staff hours.

(iii) Payment does not include room and board or maintenance, upkeep, and improvement of the member's or family's residence.

(iv) For members who also receive intensive personal supports (IPS), the member's IP must clearly specify the role of the HTS and person providing IPS to ensure there is no duplication of services.

(v) DDSD case management supervisor review and approval is required.

(vi) Pre-authorized HTS services accomplish the same objectives as other HTS services, but are limited to situations where the HTS provider is unable to obtain required professional and administrative oversight from an oversight agency approved by the OHCA. For pre-authorized HTS services, the service:

(I) provider will receive oversight from DDSD area staff; and

(II) must be pre-approved by the DDSD director or designee.

(C) **Coverage limitations.** HTS services are authorized as specified in OAC 317:40-5-110, 317:40-5-111, and 317:40-7-13, and OAC 340:100-3-33.1.

(i) A unit is 15 minutes.

(ii) Individual HTS services providers will be limited to a maximum of 40 hours per week regardless of the number of members served.

(iii) More than one HTS may provide care to a member on the same day.

(iv) Payment cannot be made for services provided by two or more HTSs to the same member during the same hours of a day.

(v) A HTS may receive reimbursement for providing services to only one member at any given time. This does not preclude services from being provided in a group setting where services are shared among members of the group.

(vi) HTS providers may not perform any job duties associated with other employment including on call duties, at the same time they are providing HTS services.

(9) **Self Directed HTS (SD HTS).** SD HTS are provided per 317:40-9-1.

(10) **Self Directed Goods and Services (SD GS).** SD GS are provided per 317:40-9-1.

(11) **Audiology services.**

(A) **Minimum qualifications.** Audiologists must have licensure as an audiologist by the State Board of Examiners for Speech Pathology and Audiology.

(B) **Description of services.** Audiology services include individual evaluation, treatment, and consultation in hearing to members who are eligible. Services are intended to maximize the member's auditory receptive abilities. The member's IP must include a ~~physician's~~practitioner's prescription.

(i) For purposes of this Section, a ~~physician~~practitioner is defined as all licensed medical and osteopathic physicians, and physician assistants in accordance with rules and regulations covering the OHCA's SoonerCare program.

(ii) A minimum of 15 minutes for encounter and record documentation is required.

(C) **Coverage limitations.** Audiology services are provided in accordance with the member's IP.

(12) **Prevocational services.**

(A) **Minimum qualifications.** Prevocational services providers:

(i) are at least 18 years of age;

(ii) complete the OKDHS DDSD sanctioned training curriculum;

(iii) have not been convicted of, pled guilty, or pled nolo contendere to misdemeanor assault and battery or a felony per 56 O.S. § 1025.2, unless a waiver is granted per 56 O.S.§ 1025.2; and

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** Prevocational services are not available to persons who can be served under a program funded per Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act (IDEA). Services are aimed at preparing a member for employment, but are not job-task oriented. Services include teaching concepts, such as compliance, attendance, task completion, problem solving, and safety.

(i) Prevocational services are provided to members who are not expected to:

(I) join the general work force; or

(II) participate in a transitional sheltered workshop within one year, excluding supported employment programs.

(ii) When compensated, members are paid at less than 50 percent of the minimum wage. Activities included in this service are not primarily directed at teaching specific job skills, but at underlying habilitative goals, such as attention span and motor skills.

(iii) All prevocational services will be reflected in the member's IP as habilitative, rather than explicit employment objectives.

(iv) Documentation must be maintained in the record of each member receiving this service noting that the service is not otherwise available through a program funded under the Rehabilitation Act of 1973 or IDEA.

(v) Services include:

(I) center-based prevocational services as specified in OAC 317:40-7-6;

(II) community-based prevocational services as specified in OAC 317:40-7-5;

(III) enhanced community-based prevocational services as specified in OAC 317:40-7-12; and

(IV) supplemental supports as specified in OAC 317:40-7-13.

(C) **Coverage limitations.** A unit of center-based or community-based prevocational services is one hour and payment is based upon the number of hours the member participates in the service. All prevocational services and supported employment services combined may not exceed $25,000 per Plan of Care year. The following services may not be provided to the same member at the same time as prevocational services:

(i) HTS;

(ii) Intensive Personal Supports;

(iii) Adult Day Services;

(iv) Daily Living Supports;

(v) Homemaker; or

(vi) therapy services such as occupational therapy, physical therapy, nutrition, speech, psychological services, family counseling, or family training except to allow the therapist to assess the individual's needs at the workplace or to provide staff training and as allowed per 317:40-7-6.

(13) **Supported employment.**

(A) **Minimum qualifications.** Supported employment providers:

(i) are at least 18 years of age;

(ii) complete the OKDHS DDSD sanctioned training curriculum;

(iii) have not been convicted of, pled guilty, or pled nolo contendere to misdemeanor assault and battery or a felony per 56 O.S.§ 1025.2, unless a waiver is granted per 56 O.S.§ 1025.2; and

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities.

(B) **Description of services.** Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed, and includes activities that are outcome based and needed to sustain paid work by members receiving services through HCBS Waiver, including supervision and training.

(i) When supported employment services are provided at a work site in which persons without disabilities are employed, payment:

(I) is made for the adaptations, supervision, and training required by members as a result of their disabilities; and

(II) does not include payment for the supervisory activities rendered as a normal part of the business setting.

(ii) Services include:

(I) job coaching as specified in OAC 317:40-7-7;

(II) enhanced job coaching as specified in OAC 317:40-7-12;

(III) employment training specialist services as specified in OAC 317:40-7-8; and

(IV) stabilization as specified in OAC 317:40-7-11.

(iii) Supported employment services furnished under HCBS Waiver are not available under a program funded by the Rehabilitation Act of 1973 or IDEA.

(iv) Documentation that the service is not otherwise available under a program funded by the Rehabilitation Act of 1973 or IDEA must be maintained in the record of each member receiving this service.

(v) Federal financial participation (FFP) may not be claimed for incentive payment subsidies or unrelated vocational training expenses, such as:

(I) incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program;

(II) payments that are passed through to users of supported employment programs; or

(III) payments for vocational training that are not directly related to a member's supported employment program.

(C) **Coverage limitations.** A unit is 15 minutes and payment is made in accordance with OAC 317:40-7-1 through 317:40-7-21. All prevocational services and supported employment services combined cannot exceed $25,000 per Plan of Care year. The DDSD case manager assists the member to identify other alternatives to meet identified needs above the limit. The following services may not be provided to the same member at the same time as supported employment services:

(i) HTS;

(ii) Intensive Personal Supports;

(iii) Adult Day Services;

(iv) Daily Living Supports;

(v) Homemaker; or

(vi) Therapy services such as occupational therapy, physical therapy, nutrition, speech, psychological services, family counseling, or family training except to allow the therapist to assess the individual's needs at the workplace or to provide staff training.

(14) **Intensive personal supports (IPS).**

(A) **Minimum qualifications.** IPS provider agencies must have a current provider agreement with OHCA and OKDHS DDSD. Providers:

(i) are at least 18 years of age;

(ii) complete the OKDHS DDSD sanctioned training curriculum;

(iii) have not been convicted of, pled guilty, or pled nolo contendere to misdemeanor assault and battery or a felony per 56 O.S.§ 1025.2, unless a waiver is granted per 56 O.S.§ 1025.2;

(iv) receive supervision and oversight by a person with a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities; and

(v) receive oversight regarding specific methods to be used with the member to meet the member's complex behavioral or health support needs.

(B) **Description of services.**

(i) IPS:

(I) are support services provided to members who need an enhanced level of direct support in order to successfully reside in a community-based setting; and

(II) build upon the level of support provided by a HTS or daily living supports (DLS) staff by utilizing a second staff person on duty

to provide assistance and training in self-care, daily living, recreational, and habilitation activities.

(ii) The member's IP must clearly specify the role of HTS and the person providing IPS to ensure there is no duplication of services.

(iii) DDSD case management supervisor review and approval is required.

(C) **Coverage limitations.** IPS are limited to 24 hours per day and must be included in the member's IP per OAC 317:40-5-151 and 317:40-5-153.

(15) **Adult day services.**

(A) **Minimum qualifications.** Adult day services provider agencies must:

(i) meet the licensing requirements set forth in 63 O.S.§ 1-873 *et seq*. and comply with OAC 310:605; and

(ii) be approved by the OKDHS DDSD and have a valid OHCA contract for adult day services.

(B) **Description of services.** Adult day services provide assistance with the retention or improvement of self-help, adaptive, and socialization skills, including the opportunity to interact with peers in order to promote maximum level of independence and function. Services are provided in a non-residential setting separate from the home or facility where the member resides.

(C) **Coverage limitations.** Adult day services are typically furnished four or more hours per day on a regularly scheduled basis, for one or more days per week. A unit is 15 minutes for up to a maximum of six hours daily, at which point a unit is one day. All services must be authorized in the member's IP.

PART 101. TARGETED CASE MANAGEMENT SERVICES FOR PERSONS WITH ~~MENTAL RETARDATION~~INTELLECTUAL DISABILITY AND/OR RELATED CONDITIONS

317:30-5-1012. Reimbursement

(a) Reimbursement for DDSDTCM services is a unit rate based on the ~~monthly~~weekly cost per case for documented DDSDTCM services. The cost base consists of the annualized cost of case management staff including all applicable overhead and indirect service cost in accordance with the approved DHS cost allocation plan. A first year interim rate is computed by dividing the annual cost base by the projected number of units. Subsequent annual rates will include an adjustment based on previous years cost versus total billable amount. A unit of service is defined as one calendar ~~month~~ week of targeted case management, provided that a minimum of one contact which meets the description of a targeted case management activity with or on behalf of the ~~recipient~~member has been documented during the ~~month~~week claimed. Payment is made on the basis of claims submitted for payment. The provider bills at the ~~monthly~~weekly unit rate for a documented unit of ~~Medicaid~~SoonerCare DDSDTCM services provided to each ~~Medicaid~~SoonerCare eligible ~~recipient~~ member during the calendar ~~month~~week.

(b) Only one unit of DDSDTCM services may be billed for each ~~Medicaid~~SoonerCare eligible ~~recipient~~member per ~~month~~week while the ~~recipient~~member is receiving services under a DHS/DDSD HCBS Waiver or is in the transition process to receive those services. No more than twenty-six units of DDSDTCM may be provided and billed for each eligible ~~Medicaid~~SoonerCare ~~recipient~~member during their transition period from the institution. DHS/DDSD must provide documentation of all such transitional DDSDTCM services provided, indicating the date performed for each unit billed. In no case may DHS/DDSD bill for transitional and regular DDSDTCM services provided during the same ~~month~~week (i.e., if DDSD bills transitional DDSDTCM for the third week in June and the ~~recipient~~member is deinstitutionalized into the particular Waiver during the third week in June, DDSD cannot also bill for regular DDSDTCM for the third week in June). If DDSDTCM has been provided to an individual during such a transitional period but that individual dies before the placement into the community is made, decides to refuse the placement or the placement falls through, reimbursement is available.

(c) the billing week for DDSDTCM is Monday through Sunday.

317:30-5-1014. Documentation of records

All case management services rendered must be reflected by documentation in the records. All units of ~~Medicaid~~SoonerCare DDSDTCM services provided are documented by the case manager ~~on the monthly Record of Contact form~~weekly in Client Contact Manager. The following conditions must be met in order for case management services to reimbursed under ~~Medicaid~~ SoonerCare.

(1) The case manager must conduct a face-to-face interview with the ~~client~~member in order to determine ~~client~~member needs and develop approaches to meet these needs.

(2) The case manager with a team including the ~~client~~member or ~~client's~~member's representative, must develop a plan of care which is documented in the case record.

(3) The case manager must reassess the plan of care when necessary but at a minimum annually.

(4) The case manager must provide documentation to supplement the plan of care which includes:

(A) information supporting the selection of outcomes;

(B) information supporting the approaches selected;

(C) information supporting case management decisions and actions;

(D) documentation of communication with the ~~client~~member and, as appropriate, his/her representative;

(E) documentation of linkages with resources;

(F) documentation of follow-up and monitoring of the plan; and

(G) other factual information relevant to the case.

[OAR Docket #12-611; filed 5-10-12]

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

[OAR Docket #12-609]

RULEMAKING ACTION:
PERMANENT final adoption
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 # 11-30)
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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
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School Based rules are revised to align current policy with systematic and coding procedures.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH RELATED SERVICES

317:30-5-1023. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults.

(b) **Children.** Payment is made for compensable services rendered by local, regional, and state educational services agencies as defined by IDEA:

(1) **Child health screening ~~examination~~.** An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination referral is made to the SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening.

(2) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include ~~a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.~~ any of the following:

(A) vision
(B) hearing
(C) dental
(D) a child health history
(E) physical examination
(F) developmental assessment
(G) nutrition assessment and counseling
(H) social assessment and counseling
(I) genetic evaluation and counseling
(J) indicated laboratory and screening tests
(K) screening for appropriate immunizations
(L) health counseling and treatment of childhood illness and conditions

(3) **Diagnostic encounters.** Diagnostic encounters are defined as those services necessary to fully evaluate defects, physical or behavioral health illnesses or conditions discovered by the screening. Approved diagnostic encounters may include the following:

(A~~3~~) **Hearing and Hearing Aid evaluation.** Hearing evaluation includes pure tone air, bone and speech audiometry provided by a state licensed audiologist who:

(i~~A~~) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii~~B~~) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii~~C~~) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(B~~4~~) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed audiologist who:

(i~~A~~) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii~~B~~) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii~~C~~) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(C~~5~~) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a member's ear and providing a finished earmold which is used with the member's hearing aid provided by a state licensed audiologist who:

(i~~A~~) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii~~B~~) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii~~C~~) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(D~~6~~) **Vision Screening.** Vision screening ~~examination~~ in school children includes application of tests and examinations to identify visual defects or vision disorders and must be provided by a state licensed Doctor of Optometry (O.D.) or licensed physician specializing in ophthalmology (M.D. or D.O.). At a minimum, vision services include diagnosis and treatment for defects in vision.

(E~~7~~) **Speech Language evaluation.** Speech Language evaluation is for the purpose of identification of children with speech or language disorders and the diagnosis and appraisal of specific speech and language services and must be provided by state licensed speech language pathologist who:

(i~~A~~) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii~~B~~) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii~~C~~) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(F~~8~~) **Physical Therapy evaluation.** Physical Therapy evaluation includes evaluating the student's ability to move throughout the school and to participate in classroom activities and the identification of movement dysfunction and related functional problems and must be provided by a state licensed physical therapist.

(G~~9~~) **Occupational Therapy evaluation.** Occupational Therapy evaluation services include determining what therapeutic services, assistive technology, and environmental modifications a student requires for participation in the special education program and must be provided by a state licensed occupational therapist.

(H~~10~~) **Psychological Evaluation and Testing.** Psychological Evaluation and Testing are for the purpose of diagnosing and determining if emotional, behavioral, neurological, or developmental issues are affecting academic performance and for determining recommended treatment protocol. Evaluation/testing for the sole purpose of academic placement (e.g. diagnosis of learning disorders) is not a compensable service. Psychological Evaluation and Testing must be provided by state licensed, Board Certified, Psychologist or School Psychologist certified by State Department of Education (SDE).

~~(11) **Dental Screening Examination.** Screening for dental disease by a state licensed dentist. The child may be referred directly to a dentist for further screening and/or treatment.~~

(~~12~~4) **Child guidance treatment encounter.** A child guidance treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan, or as a result of an IEP or IFSP and may include the following:

(A) **Hearing and Vision Services.** Hearing and vision services may include provision of habilitation activities, such as auditory training, aural and visual habilitation training, including Braille, and communication management, orientation and mobility, counseling for vision and hearing losses and disorders. Services must be provided by:

(i) state licensed, Master's Degree Audiologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed, Master's Degree Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(iii) state certified Speech Therapist working under the direction of a state licensed Speech Language Pathologist;

(iv) state certified deaf education teacher;

(v) certified orientation and mobility specialists; and

(vi) state certified vision impairment teachers.

(B) **Speech Language Therapy Services.** Speech Language Therapy Services include provisions of speech and language services for the habilitation or prevention of communicative disorders and must be provided by a state licensed Speech Language Pathologist who:

(i) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate; or

(iv) a Speech Therapy Assistant who has been authorized by the Board of Examiners, working under the direction of a state licensed speech language pathologist. The licensed Speech Language Pathologist may not supervise more ~~that~~than two Speech Therapy assistants, and must be on site.

(C) **Physical Therapy Services.** Physical Therapy Services are provided for the purpose of preventing or alleviating movement dysfunction and related functional problems that adversely affects the child's education and must be provided by state licensed physical therapist or a Physical Therapy Assistant who has been authorized by the Board of Examiners working under the supervision of a licensed Physical Therapist. The licensed Physical Therapist may not supervise more than three Physical Therapy Assistants.

(D) **Occupational Therapy Services.** Occupational therapy may include provision of services to improve, develop or restore impaired ability to function independently and must be provided by a state licensed Occupational Therapist or an Occupational Therapy Assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed Occupational Therapist.

(E) **Nursing Services.** Nursing Services may include provision of services to protect the health status of children, correct health problems and assist in removing or modifying health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services include medically necessary procedures rendered at the school site, such as catheterization, suctioning, administration and monitoring of medication.

~~(F) **Psychological Services.** Psychological services are planning and managing a program of psychological services, including the provision of counseling for children and parents, consulting on management of severe behavioral and emotional concerns in school and home. All services must be for the direct benefit of the child. Psychological services must be provided by a state licensed Psychologist, or School Psychologist certified by SDE.~~

(~~G~~F) **Psychotherapy ~~Counseling~~ Services.** Psychotherapy ~~counseling~~ services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy ~~counseling~~ services must be provided by a state licensed Social Worker, a state Licensed Professional Counselor, a State licensed Psychologist or School Psychologist certified by the SDE, a State licensed Marriage and Family Therapist or a State licensed Behavioral Practitioner, or under Board supervision to be licensed in one of the above stated areas.

(~~H~~G) **Assistive Technology.** Assistive technology are the provision of services that help to select a device and assist a student with disability(ies) to use an Assistive technology device including coordination with other therapies and training of child and caregiver. Services must be provided by a:

(i) state licensed, Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) state licensed Physical Therapist; or

(iii) state licensed Occupational Therapist.

(H~~13~~) **Personal Care.** Provision of personal care services allow students with disabilities to safely attend school; includes, but is not limited to assistance with toileting, feeding, positioning, hygiene, and riding school bus to handle medical or physical emergencies. Services must be provided by registered paraprofessionals/assistants ~~who~~that have completed training approved or provided by SDE, or Personal Care Assistants, including Licensed Practical Nurses, who have completed on-the-job training specific to their duties.

(I~~14~~) **Therapeutic Behavioral Services.** Therapeutic behavioral services ~~is an intervention~~are

interventions to modify the non-adaptive behavior necessary to improve the student's ability to function in the community as identified on the plan of care. Medical necessity must be identified and documented through assessment and evaluation. Services encompass behavioral management, redirection, and assistance in acquiring, retaining, improving, and generalizing socialization, communication and adaptive skills. This service must be provided by a Behavioral Health School Aide (BHSA) who has a high school diploma or equivalent and has successfully completed the paraprofessional training approved by the State Department of Education and a training curriculum in behavioral interventions for Pervasive Developmental Disorders as recognized by OHCA. BHSA must be supervised by a bachelors level individual with a special education certification. BHSA must have CPR and First Aid certification. Six additional hours of related continuing education are required per year.

(J~~15~~) **Immunization.** Immunizations must be coordinated with the Primary Care Physician for ~~those Medicaid eligible~~ children enrolled in SoonerCare. An administration fee, only, can be paid for immunizations provided by the schools.

(c) **Individuals eligible for Part B of Medicare.** EPSDT school health related services provided to Medicare eligible ~~recipients~~members are billed directly to the fiscal agent.

317:30-5-1027. Billing

(a) Each service has a specified unit of service (unit) for billing purposes which represents the actual time spent providing a direct service. Direct service must be face-to face with the child. There is no reimbursement for time reviewing/completing paperwork and/or documentation related to the service or for staff travel to/from the site of service, unless otherwise specified.

(1) Most units of service are time-based, meaning that the service must be of a minimum duration in order to be billed. A unit of service that is time-based is continuous minutes; the time cannot be aggregated throughout the day.

(2) There are no minimum time requirements for evaluation services, for which the unit of service is generally a completed evaluation. The only exception is the Psychological Evaluation, which is billed in hourly increments.

(b) The following units of service are billed on the appropriate claim form:

(1) Service: Child Health Screening; Unit: Completed comprehensive screening.

(2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.

(3) Service: Child Health Encounter; ~~Unit: 5-10 minutes equals 1 unit; 11-20 minutes equals 2 units; over 21 minutes equals 3 units;~~Unit: per encounter; limited to ~~30 units per year, additional units must be prior authorized~~3 encounters per day.

(4) Service: Individual Treatment Encounter ~~for IEP School Based and School Based~~; Unit: 15 minutes, unless otherwise specified.

(A) Hearing and Vision Services~~, IEP School Based~~.

~~(B) Hearing and Vision Services, School Based.~~

(~~C~~B) Speech Language Therapy~~, IEP School Based~~; Unit: per session, limited to one per day.

~~(D) Speech Language Therapy, School Based~~

(~~E~~C) Physical Therapy~~, IEP School Based~~.

~~(F) Physical Therapy, School Based.~~

(~~G~~D) Occupational Therapy~~, IEP School Based~~.

~~(H) Occupational Therapy, School Based.~~

(~~I~~E) Nursing Services~~, IEP School Based~~; ~~Unit: 5 minutes equals 1 unit; limited to 24 per day~~Unit: up to 15 minutes; maximum 32 units per day.

~~(J) Nursing Services, School Based; Unit: 5 minutes equals 1 unit; limited to 24 per day~~

~~(K) Psychological Services, IEP School Based~~.

~~(L) Psychological Services, School Based.~~

(~~M~~F) Psychotherapy ~~Counseling~~ Services~~, IEP School Based~~; maximum 8 units per day.

~~(N) Psychotherapy Counseling Services, School Based.~~

(~~O~~G) Assistive Technology~~, IEP School Based~~.

~~(P) Assistive Technology, School Based.~~

~~(Q) Dental Screening, IEP School Based.~~

~~(R) Dental Screening, School Based.~~

(~~S~~H) Therapeutic Behavioral Services~~, IEP School Based; limited to 12 units per day~~.

(5) Service: Group Treatment Encounter ~~for IEP School Based and School Based~~; No more than 5 ~~recipients~~members per group, Unit: 15 minutes, unless otherwise specified.

(A) Hearing and Vision Services~~, IEP School Based~~.

~~(B) Hearing and Vision Services, School Based.~~

(~~C~~B) Speech Language Therapy~~, IEP School Based~~; Unit: per session, limited to one per day.

~~(D) Speech Language Therapy, School Based.~~

(~~E~~C) Physical Therapy~~, IEP School Based~~.

~~(F) Physical Therapy, School Based.~~

(~~G~~D) Occupational Therapy~~, IEP School Based~~.

~~(H) Occupational Therapy, School Based.~~

~~(I) Psychological Services, IEP School Based.~~

~~(J) Psychological Services, School Based.~~

(~~K~~E) Psychotherapy ~~Counseling~~ Services~~, IEP School Based~~; maximum 8 units per day.

~~(L) Psychotherapy Counseling Services, School Based.~~

(6) Service: Administration only, Immunization; Unit: one administration.

(7) Service: Hearing Evaluation; Unit: Completed Evaluation.

(8) Service: Hearing Aid Evaluation; Unit: Completed Evaluation.

(9) Service: Audiometric Test (Impedance); Unit: Completed Test (Both Ears).

(10) Service: Tympanometry and acoustic reflexes.
(11) Service: Ear Impression Mold; Unit: 2 molds (one per ear).
(12) Service: Vision Screening; Unit: one examination, by state licensed O.D., M.D., or D.O.
(13) Service: Speech Language Evaluation; Unit: one evaluation.
(14) Service: Physical Therapy Evaluation; Unit: one evaluation.
(15) Service: Occupational Therapy Evaluation; Unit: one evaluation.
(16) Service: Psychological Evaluation and Testing; Unit: one hour ~~(with written report)~~.
(17) Service: Personal Care Services; Unit: 10 minutes.
(18) Service: Nursing Assessment/Evaluation (Acute episodic care); Unit: one assessment/evaluation, 18 yearly.
(19) Service: Psychological Evaluation and Testing; Unit: per hour of psychologist time, 8 hours yearly.

[OAR Docket #12-609; filed 5-10-12]

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

[OAR Docket #12-603A]

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RULES:
Subchapter 5. Individual Providers and Specialties
Part 113. Living Choice Program
317:30-5-1201. [AMENDED]
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ANALYSIS:
OHCA rules are revised to change language in policy that references "mental retardation" to "intellectual disabilities". Revisions are necessary to comply with Public Law 111-256 (Rosa's Law) that replaces the term mental retardation with intellectual disability, in federal education, health and labor laws.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 113. LIVING CHOICE PROGRAM

317:30-5-1201. Benefits for members with ~~mental retardation~~intellectual disabilities

(a) Living Choice program participants with ~~mental retardation~~intellectual disabilities may receive a range of necessary medical and home and community based services for one year after moving from the institution. The one year period begins the day the member occupies a qualified residence in the community. Once this transition period is complete, the member receives services through the Community waiver.
(b) Services must be billed using the appropriate HCPCS or CPT codes and must be medically necessary.
(c) All services must be necessary for the individual to live in the community, require prior authorization, and must be documented in the individual transition plan. The number of units of services the member is eligible to receive is limited to the amounts approved in the transition plan. The transition plan may be amended as the member's needs change.
(d) Services that may be provided to members with ~~mental retardation~~intellectual disabilities are listed in paragraphs (1) through (28) of this subsection:
(1) assistive technology;
(2) adult day health care;
(3) architectural modifications;
(4) audiology evaluation and treatment;
(5) community transition;
(6) daily living support;
(7) dental services;
(8) family counseling;
(9) family training;
(10) group home;
(11) respite care;
(12) homemaker services;
(13) habilitation training services;
(14) home health care;
(15) intensive personal support;
(16) extended duty nursing;

(17) skilled nursing;
(18) nutrition services;
(19) therapy services including physical, occupational, and speech;
(20) psychiatry services;
(21) psychological services;
(22) agency companion services;
(23) non-emergency transportation;
(24) pre-vocational services;
(25) supported employment services;
(26) specialized foster care;
(27) specialized medical equipment and supplies; and
(28) SoonerCare compensable medical services.

[OAR Docket #12-603A; filed 5-10-12]

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

[OAR Docket #12-616]

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Part 17. Medical Suppliers
317:30-5-211.10. [AMENDED]
(Reference APA WF # 11-38)
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ANALYSIS:
Policy is revised to remove the requirement for a certificate of medical necessity for positive airway pressure devices (BiPAP and CPAP) as such CMNs are no longer used for authorization decisions. The agency's Medical Authorization Unit and physicians rely on documentation from sleep studies and other medical records to prior authorize.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 17. MEDICAL SUPPLIERS

317:30-5-211.10. Durable medical equipment (DME)

(a) **DME.** DME includes, but is not limited to: medical supplies, orthotics and prosthetics, custom braces, therapeutic lenses, respiratory equipment and other qualifying items when acquired from a contracted DME provider.

(b) **Certificate of medical necessity.** Certain items of DME require a CMN/OHCA CMN which should be submitted with the request for prior authorization. These items include but are not limited to:

(1) hospital beds;
(2) support surfaces;
~~(3) continuous positive airway pressure devices (Bi-PAP and CPAP);~~
(~~4~~3) patient lift devices;
(~~5~~4) external infusions pumps;
(~~6~~5) enteral and parenteral nutrition; and
(~~7~~6) pneumatic compression devices.

(c) **Prior authorization.**

(1) **Rental.** Rental of hospital beds, support surfaces, continuous positive airway pressure devices (CPAP and BiPAP), pneumatic compression devices, and lifts require prior authorization and, except for CPAP and BiPAP devices, a completed CMN/OHCA CMN; medical necessity must be documented in the member's medical record and be signed by the physician.

(2) **Purchase.** Equipment will be purchased when a member requires the equipment for an extended period of time. During the prior authorization review the PA consultant may change the authorization from a rental to a purchase or a purchase to a rental based on the documentation submitted. The provider must indicate whether the DME item provided is new or used.

(d) **Backup equipment.** Backup equipment is considered part of the rental cost and not a covered service without prior authorization.

(e) **Home modification.** Equipment used for home modification is not a covered service.

[OAR Docket #12-616; filed 5-10-12]

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

[OAR Docket #12-604]

RULEMAKING ACTION:
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Subchapter 5. Individual Providers and Specialties
Part 32. SoonerRide Non-Emergency Transportation
317:30-5-326.1. [AMENDED]
317:30-5-327. [AMENDED]
317:30-5-327.1. [AMENDED]
317:30-5-327.2. [REVOKED]
317:30-5-328. [NEW]
(Reference APA WF # 11-25A)
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ANALYSIS:
SoonerCare non-emergency transportation rules are revised to clarify OHCA's current policy concerning meals and lodging, travel distance, and eligibility. This rule will assist with future cost savings and prevent abuse of services. This rule will also ensure services for current and future SoonerCare members.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION

317:30-5-326.1. Definitions

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

"Attendant" means an employee of the nursing facility who is provided by and trained by the nursing facility at the nursing facility's expense.

"Emergency" means a serious situation or occurrence that happens unexpectedly and demands immediate action such as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected, by a reasonable and prudent layperson, to result in placing the members' health in serious jeopardy, serious impairment to bodily function, or serious dysfunction of any bodily organ or part.

"~~Escort~~Medical escort" means a family member,~~or~~ legal guardian, or volunteer whose presence is required and medically necessary to assist a member during transport and while at the place of treatment. ~~An~~A medical escort voluntarily accompanies the member during transport and leaves the vehicle at its destination and remains with the member. ~~An~~A medical escort must be of an age of legal majority recognized under State law.

"Member/eligible member" means any person eligible for SoonerCare ~~with the exception of~~and individuals considered to be Medicare/SoonerCare full dually eligible. This does not include those individuals who are categorized only as Qualified Medicare Beneficiaries ~~Plus (QMBP)~~ (QMB), Specified Low Income Medicare Beneficiaries (SLMB), Qualifying Individuals-1 (QI-1), individuals who are in an institution for mental disease (IMD), inpatient, institutionalized, Home and Community Based Waiver members, with the exception of the In-home Supports Waiver for Children ~~and~~, the Advantage Waiver, the Living Choice demonstration, the Sooner Seniors Waiver, the My Life; My Choice Waiver and the Medically Fragile Waiver.

"Nearest appropriate facility" means a medical facility that is generally equipped and legally permitted to provide the needed care for the illness or injury involved that is the closest in geographical proximity to the members' residence with exceptions. In the case of approved hospital services, it also means that a physician or physician specialist is available to provide the necessary care required to treat the member's condition. The fact that a particular physician does or does not have staff privileges in a hospital is not a consideration in determining whether the hospital has appropriate facilities. Thus, non-emergency transportation service to a more distant hospital, clinic, practitioner or physicians' office solely to avail a member of the service of a specific physician or physician specialist does not make the institution in which the physician has staff privileges the nearest institution with appropriate facilities.

"Non-ambulance" means a carrier that is not an ambulance.

"Non-emergency" means all reasons for transportation that are not an emergency as defined above.

"SoonerRide Non-Emergency Transportation (NET)" means non-emergency non-ambulance transportation provided statewide within the geographical boundaries of the State of Oklahoma.

317:30-5-327. Eligibility for SoonerRide ~~non-emergency non-ambulance transportation eligibility~~NET

Transportation ~~must be for medically necessary treatment~~is provided when medically necessary in connection with examination and treatment to the nearest appropriate facility in accordance with 42 CFR 441.170. As the Medicaid Agency, OHCA is the payer of last resort, with few exceptions. When other resources are available, those resources must first be utilized. Exceptions to this policy are those receiving medical treatment through Indian Health Services and those eligible for the Crime Victims Compensation Act. Individuals considered fully dual eligible qualify for SoonerRide. However, SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries ~~Plus (QMBP)~~(QMB);

(2) Specified Low Income Medicare Beneficiaries (SLMB);

(3) Qualifying Individuals-1 and individuals who are in an institution for mental disease (IMD);

(4) inpatient;

(5) institutionalized (i.e. long-term care facility);

(6) Home and Community Based Waiver members, with the exception of the In-home Supports Waiver for Children ~~and~~, the Advantage Waiver, the Living Choice demonstration, the Sooner Seniors Waiver, the My Life; My Choice Waiver and the Medically Fragile Waiver.

317:30-5-327.1. ~~Access to non-emergency non-ambulance transportation through SoonerRide~~ SoonerRide NET Coverage

(a) SoonerRide NET is available for SoonerCare covered admission and discharge into inpatient hospital care, outpatient hospital care, services from physicians/approved practitioners, diagnostic services, clinic services, pharmacy services, eye care and dental care under the following conditions:

(1) Transportation is to the nearest appropriate facility or medical provider capable of providing the necessary services.

(A) The nearest appropriate facility or provider is not considered appropriate if the member's condition requires a higher level of care or specialized services available at the more distant facility. However, a legal impediment barring a member's admission would mean that the institution did not have "appropriate facilities". For example, the nearest transplant center may be in another state and that state's law precludes admission of nonresidents.

(B) The nearest appropriate facility is not considered appropriate if no bed or provider is available. However, the medical records must be properly documented.

(C) Services should be available within 45 miles of the members' residence with exceptions. The OHCA has discretion and the final authority to approve or deny travel greater than 45 miles to access services.

(i) Members seeking self-referred services are limited to the 45 mile radius.

(ii) Native Americans seeking services at a tribal or I.H.S facility may be transported to any facility within a 45 mile radius equipped for their medical needs with exceptions. Trips to out-of-state facilities require prior approval.

(iii) Veterans may be transported to the nearest Veterans Affairs (VA) facility equipped for their medical needs. Trips to out-of-state VA facilities require prior approval.

(iv) Duals may be transported to any facility within a 45 mile radius equipped for their medical needs with exceptions. Trips to out-of-state facilities require prior approval.

(2) The service provided must be a SoonerCare covered service provided by a medical provider who is enrolled in the SoonerCare program; and

(3) Services requiring prior authorization must have been authorized (e.g. travel that exceeds the 45 mile radius, out-of-state travel, meals and lodging services).

(~~a~~b) ~~Non-emergency, non-ambulance transportation services are available through the state's SoonerRide Non-Emergency Transportation (NET) program.~~ SoonerRide NET is available on a statewide basis to all eligible members.

(~~b~~c) ~~SoonerRide NET includes non-emergency, non-ambulance transportation for members to and from SoonerCare providers of health care services. Eligible providers are providers who have valid OHCA contracts. The NET must be to access medically necessary covered services for which a member has available benefits. Additionally,~~ SoonerRide NET may also be provided for eligible members to providers other than SoonerCare providers if the transportation is to access medically necessary services covered by SoonerCare.

(~~c~~d) ~~The use of SoonerCare funded transportation for any other purpose is fraudulent activity and subject to criminal prosecution and civil and administrative sanctions.~~SoonerRide NET is available if a member is being discharged from a facility to their home. The facility is responsible for scheduling the transportation.

~~(d) The SoonerRide broker assures that NET transportation services are provided:~~

~~(1) in a manner consistent with the best interest of the member;~~

~~(2) similar in scope and duration state-wide, although there will be some variation based on available resources in a particular geographical area of the state;~~

~~(3) appropriate to available services; and~~

~~(4) appropriate for the limitations of the member.~~

(e) In documented medically necessary instances, a medical escort may accompany the member.

(1) SoonerRide NET is not required to transport any additional individuals other than the one approved individual providing the escort services. In the event that additional individuals request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies which have been approved by the OHCA.

(2) A medical escort is not eligible for direct compensation by the SoonerRide broker or SoonerCare.

317:30-5-327.2. Service availability [REVOKED]

~~(a) SoonerRide NET is available for SoonerCare covered admission and discharge into inpatient hospital care, outpatient hospital care, services from physicians, diagnostic devices, clinic services, pharmacy services, eye care and dental care.~~

~~(b) SoonerRide NET is available if a member is being discharged from a facility to home. The facility is responsible for scheduling the transportation.~~

~~(c) In documented medically necessary instances, may wish to accompany the member for health care services. In such instances, the family member or legal guardian may accompany the member.~~

~~(1) SoonerRide is not required to transport any additional family members other than the one family member providing escort services. In the event that additional family members request transportation, the SoonerRide broker may charge those family members according to the SoonerRide broker's policies which have been approved by the OHCA.~~

~~(2) A escort is not eligible for direct compensation by the SoonerRide broker or SoonerCare.~~

317:30-5-328. Subsistence (sleeping accommodations and meals)

(a) Lodging and meals assistance for eligible members is provided only when medically necessary in connection with transportation to and from SoonerCare compensable services. All efforts to secure a temporary place to stay either by the hospital or a nonprofit organization must be exhausted prior to seeking reimbursement for lodging.

(1) Lodging and/or meals are reimbursable when prior authorized. The following factors may be considered by OHCA when authorizing reimbursement:

(A) travel is to obtain specialty care; and

(B) the trip cannot be completed during SoonerRide operating hours;

(C) the trip is more than 100 miles from the member's city of residence; or

(D) the treatment requires an overnight stay.

(2) When a member is not required to have a PCP or when a PCP referral is not required to obtain a SoonerCare covered service, a member may go to any provider they choose but SoonerCare will not reimburse for transportation, lodging, or meals if the distance is beyond what is considered the nearest appropriate facility.

(3) Meals will be reimbursed only if an overnight stay occurs and the stay meets the lodging criteria.

(4) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required. A member may not receive reimbursement for lodging and meals for days the member is an inpatient in a hospital or medical facility.

(5) During inpatient or outpatient medical stays, meals and lodging are limited to 14 days for each medical stay unless the OHCA prior authorizes additional days. A member may not receive reimbursement for lodging and meals for days the member is an inpatient in a hospital or medical facility.

(b) A member who needs lodging and/or meals assistance must first seek services with a contracted lodging provider. If the lodging provider provides meals the member may not be reimbursed for services billable by the contracted lodging provider. If lodging and/or meals assistance with contracted lodging providers are not available, the member may request reimbursement assistance by submitting a travel reimbursement form. The travel reimbursement form may be obtained by contacting SoonerCare Care Management division. Any lodging and/or meal expenses claimed on the travel reimbursement form must be documented with receipts, and reimbursement must not exceed state per diem amounts. The OHCA has discretion and the final authority to approve or deny meals and lodging reimbursement.

[OAR Docket #12-604; filed 5-10-12]

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

[OAR Docket #12-601]

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Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-42.6. [AMENDED]
Part 29. Renal Dialysis Facilities
317:30-5-306. [AMENDED]
317:30-5-307. [AMENDED]
(Reference APA WF # 11-19)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 110-275, Section 153; 42 CFR Parts 410, 413, and 414; CMS-1418-F (Federal Register Vol. 75, No. 155)

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ANALYSIS:
Policy, the State Plan, and reimbursement methodology will be updated to correspond to new Medicare guidelines regarding payment to End Stage Renal Disease (ESRD) facilities. Currently policy and methodology utilizes Medicare's old composite rate for a defined set of ESRD items and services, while paying separately for services not included in the composite rate, such as drugs and laboratory tests. This payment system is replaced with a new bundled prospective payment system (PPS), in which a single bundled payment to the ESRD facility for each treatment will cover all renal dialysis services. If the change is not made, OHCA will be out of line with Medicare reimbursement rates for this provider type.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-42.6. Dialysis

Payment for dialysis is made at the ~~all-inclusive~~ Medicare ~~allowable composite~~prospective payment system wage adjusted base rate. This rate includes all services which Medicare has established as an integral part of the dialysis procedure~~, such as routine medical supplies, certain laboratory procedures, oxygen, etc. Payment is made separately for injections of Epoetin Alfa (EPO or Epogen)~~. The physician is reimbursed separately.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 29. RENAL DIALYSIS FACILITIES

317:30-5-306. Coverage by category

Payment is made to renal dialysis facilities as set forth in this Section.

(1) **Adults.** Payment is made for outpatient renal dialysis for adults at the ~~composite~~PPS rate.

(2) **Children.** Coverage for children is the same as for adults.

(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable service.

317:30-5-307. Payment methodology

Payment of in-facility dialysis treatments and home dialysis treatment is made under the ~~composite~~PPS rate reimbursement system ~~as established by Medicare~~.

(1) All items and services included under the ~~composite~~PPS rate must be furnished by the facility, either directly or under arrangements, to all of its dialysis patients. If the facility fails to furnish (either directly or under arrangements) any part of the items and services covered under the rate, then the facility cannot be paid any amount for the part of the items and services that the facility does furnish. These items and services include:

(A) medically necessary dialysis equipment and dialysis support equipment;

(B) home dialysis support services including the delivery, installation, maintenance, repair, and testing of home dialysis equipment, and home support equipment;

(C) purchase and delivery of all necessary dialysis supplies;

(D) routine ESRD related laboratory tests~~,~~; and

(E) all dialysis services furnished by the facility's staff.

(2) Some examples (but not an all-inclusive list) of items and services that are included in the ~~composite~~PPS rate and may not be billed separately when furnished by a dialysis facility are:

(A) staff time used to administer blood;

(B) declotting of shunts and any supplies used to declot shunts;

(C) oxygen and the administration of oxygen; and

(D) staff time used to administer nonroutine peritoneal items.

[OAR Docket #12-601; filed 5-10-12]

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

[OAR Docket #12-615]

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Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-696. [AMENDED]
317:30-5-698. [AMENDED]
(Reference APA WF # 11-36)

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ANALYSIS:
Agency dental policy is revised to allow for permanent restoration of a tooth when done as part of a Cvek Pulpotomy. The Cvek Pulpotomy is a procedure that better maintains the vitality of exposed pulps, especially in young patients. Allowing permanent restoration with the Cvek Pulpotomy will reduce the need for root canals. Finally, rules are revised to allow dentists to choose the proper type of crown that best serves the member's oral environment.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) **Adults.**

(A) Dental coverage for adults is limited to:

(i) emergency extractions;

(ii) Smoking and Tobacco Use Cessation Counseling; and

(iii) medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician.

(B) Payment is made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4)of this Section).

(2) **Home and community based waiver services (HCBWS) for the ~~mentally retarded~~ intellectually disabled.** All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults. All providers performing preventive services must be available to perform needed restorative services for those members receiving any evaluation and preventive services.

(A) **Comprehensive oral evaluation.** This procedure is performed for any member not seen by any dentist for more than 12 months.

(B) **Periodic oral evaluation.** This procedure may be provided for a member of record if she or he has not been seen for more than six months.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint.

(D) **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be of diagnostic quality and medically necessary. A clinical examination must precede any radiographs, and chart documentation must include member history, prior radiographs, caries risk assessment and both dental and general health needs of the member. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Panoramic films are allowable once in a three year period and must be of diagnostic quality. Panoramic films are only compensable when chart documentation clearly indicates the test is being performed to rule out or evaluate non-caries related pathology. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

(E) **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on the interproximal and occlusal surfaces to be eligible for this service. This service is available through 18 years of

age and is compensable only once per lifetime. Replacement of sealants is not a covered service under the SoonerCare program.

(F) **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

(G) **Composite restorations.**

(i) This procedure is compensable for primary incisors as follows:

(I) tooth numbers O and P to age 4 years;

(II) tooth numbers E and F to age 6 years;

(III) tooth numbers N and Q to 5 years; and

(IV) tooth numbers D and G to 6 years.

(ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.

(iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

(H) **Amalgam.** Amalgam restorations are allowed in:

(i) posterior primary teeth when:

(I) 50 percent or more root structure is remaining;

(II) the teeth have no mobility; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) any permanent tooth, determined as medically necessary by the treating dentist.

(I) **Stainless steel crowns for primary teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are allowed if:

(I) the child is five years of age or under;

(II) 70 percent or more of the root structure remains; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) Stainless steel crowns are treatment of choice for:

(I) primary teeth with pulpotomies or pulpectomies, if the above conditions exist;

(II) primary teeth where three surfaces of extensive decay exist; or

(III) primary teeth where cuspal occlusion is lost due to decay or accident.

~~(iii) Stainless steel crowns are the treatment of choice on posterior permanent teeth that have completed endodontic therapy, if more than three surfaces of extensive decay exist or where cuspal occlusion are lost due to decay prior to age 16 years.~~

(~~iv~~iii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(~~v~~iv) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other ~~prosthetic~~restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(J) **Stainless steel crowns for permanent teeth.** The use of any stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are the treatment of choice for:

(I) posterior permanent teeth that have completed endodontic therapy if three or more surfaces of tooth is destroyed;

(II) posterior permanent teeth that have three or more surfaces of extensive decay; or

(III) where cuspal occlusion is lost due to decay prior to age 16 years.

(ii) Preoperative periapical x-rays and/or written documentation explaining the extent of decay must be available for review, if requested.

(iii) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other restorative procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

(~~J~~K) **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre and post operative periapical x-rays must be available for review, if requested.

(I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;

(II) Tooth numbers O and P before age 5 years;

(III) Tooth numbers E and F before 6 years;

(IV) Tooth numbers N and Q before 5 years; and

(V) Tooth numbers D and G before 5 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(~~K~~L) **Anterior root canals.** Payment is made for the services provided in accordance with the following:

(i) This procedure is done for permanent teeth when there are no other missing anterior teeth in the same arch requiring replacement.

(ii) Acceptable ADA filling materials must be used.

(iii) Preauthorization is required if the member's treatment plan involves more than four anterior root canals.

(iv) Teeth with less than 50 percent of clinical crown should not be treatment-planned for root canal therapy.

(v) Pre and post operative periapical x-rays must be available for review.

(vi) Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA.

(vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.

(viii) Endodontic treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.

(ix) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

(~~L~~M) **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

(I) This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.

(II) First primary molars are not allowed space maintenance if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.

(III) If there are missing teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.

(IV) The teeth numbers shown on the claim should be those of the missing teeth.

(V) Post operative bitewing x-rays must be available for review.

(VI) Bilateral band and loop space maintainer is allowed if member does not have eruption of the four mandibular anterior teeth in position or if sedation case that presents limitations to fabricate other space maintenance appliances.

(ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:

(I) Lingual arch bar is used when permanent incisors are erupted and multiple missing teeth exist in the same arch.

(II) The requirements are the same as for band and loop space maintainer.

(III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age 6 years to prevent abnormal swallowing habits.

(IV) Pre and post operative x-rays must be available.

(iii) **Interim partial dentures.** This service is for anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16 years.

(~~M~~N) **Analgesia.** Analgesia services are reimbursable in accordance with the following:

(i) **Inhalation of nitrous oxide.** Use of nitrous oxide is compensable for four occurrences per year and is not separately reimbursable, if provided on the same date by the same provider as IV sedation, non-intravenous conscious sedation or general anesthesia. The need for this service must be documented in the member's record. This procedure is not covered when it is the dentist's usual practice to offer it to all patients.

(ii) **Non-intravenous conscious sedation.** Non-intravenous conscious sedation is not separately reimbursable, if provided on the same date by the same provider as analgesia, anxiolysis, inhalation of nitrous oxide, IV sedation or general anesthesia. Non-intravenous conscious sedation is reimbursable when determined to be medically necessary for documented handicapped members, uncontrollable members or justifiable medical or dental conditions. The report must detail the member's condition. No services are reimbursable when provided primarily for the convenience of the member and /or the dentist, it must be medically necessary.

(~~N~~O) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted materials, not a cavity liner. Indirect and direct pulp cap codes require specific narrative support addressing materials used, intent and reasons for use. Application of chemicals used for dentinal hypersensitivity is not allowed as indirect pulp cap. Utilization of these codes is verified by post payment review.

(~~O~~P) **Sedative restorations.** Sedative restorations include removal of decay, if present, and direct or indirect pulp cap, if needed. These services are reimbursable for the same tooth on the same date of service. Permanent restoration of the tooth is allowed after 30 days unless the tooth becomes symptomatic and requires pain relieving treatment.

(~~P~~Q) **History and physical.** Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.

(~~Q~~R) **Local anesthesia.** This procedure is included in the fee for all services.

(~~R~~S) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five

intervention steps of asking the member to describe his/her smoking, advising the member to quit, assessing the willingness of the member to quit, assisting with referrals and plans to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by physicians, physician assistants, nurse practitioners, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the member specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(4) **Pregnant Women.** Dental coverage for this special population is provided regardless of age.

(A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).

(B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.

(C) In addition to dental services for adults, other services available include:

(i) Comprehensive oral evaluation must be performed and recorded for each new member, or established member not seen for more than 24 months;

(ii) Periodic oral evaluation as defined in OAC 317:30-5-696(3)(B);

(iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same member, or if the member is under active treatment;

(iv) Radiographs as defined in OAC 317:30-5-696(3)(D);

(v) Dental prophylaxis as defined in OAC 317:30-5-696(3)(F);

(vi) Composite restorations:

(I) Any permanent tooth that has an opened lesion that is a food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.

(II) Class I posterior composite resin restorations are allowed in posterior teeth that qualify;

(vii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and

(viii) Analgesia. Analgesia services are reimbursable in accordance with OAC 317:30-5-696~~(iii)(M)~~(3)(N).

(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).

(E) Periodontal scaling and root planing. Required that 50% or more of six point measurements be 5 millimeters or greater. This procedure is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism and requires anesthesia and some soft tissue removal.

(5) **Individuals eligible for Part B of Medicare.**

(A) Payment is made based on the member's coinsurance and deductibles.

(B) Services which have been denied by Medicare as non-compensable should be filed directly with the OHCA with a copy of the Medicare EOB indicating the reason for denial.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis (See OAC 317:30-5-695(d)(2). Requests for dental services requiring prior authorization must be accompanied by sufficient documentation. X-rays, six point periodontal charting and comprehensive treatment plans are required. Study models and narratives may be requested by OHCA or representatives of OHCA. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense. Submitted documentation used to base a decision will not be returned.

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members under 21 and eligible ICF/MR residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be submitted with x-ray film mounts and each film or print must be of good readable quality. X-rays must be identified by left and right sides with the date, member name, member ID, provider name, and provider ID. All x-rays, regardless of the media, must be placed together in the same envelope with a completed comprehensive treatment plan and a completed current ADA form requesting all treatments requiring prior authorization. The film, digital media or printout must be of sufficient quality to clearly demonstrate for the reviewer, the pathology which is the basis for the authorization request. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics. ~~A permanent restoration is not billable to the OHCA when performing pulpotomy or pulpal debridement on a permanent tooth.~~

(A) **Anterior root canals.** This procedure is for members who have a treatment plan requiring more than four anterior and/or posterior root canals. Payment is made for services provided in accordance with the following:

(i) Permanent teeth numbered 6, 7, 8, 9, 10, 11, 22, 23, 24, 25, 26 and 27 are eligible for therapy if there are no other missing teeth in the same arch requiring replacement, unless numbers 6 , 11 , 22, or 27 are abutments for prosthesis.

(ii) Accepted ADA materials must be used.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core to retain a crown.

(vii) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be authorized.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider documents that the member has improved oral hygiene and flossing ability in this member's records.

(ii) Teeth that would require pre-fabricated post and cores to retain a restoration due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area. Approval of second molars is contingent upon proof of medical necessity.

(vi) Only ADA accepted materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure is limited to a maximum of five teeth. A request may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) there are missing teeth in the same arch requiring replacement;

(II) an opposing tooth has super erupted;

(III) loss of tooth space is one third or greater;

(IV) opposing second molars are involved unless prior authorized; or

(V) the member has multiple teeth failing due to previous inadequate root canal therapy or follow-up.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. Core build-up code is only available for use if other restorative codes are not sufficient. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(x) a failing root canal is determined not medically necessary for re-treatment.

(2) ~~**Cast metal crowns or ceramic based crowns.**~~ **Crowns for permanent teeth.**~~These procedures~~Crowns are compensable for restoration of natural teeth for members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for the Mentally Retarded(ICF/MR) and who have been approved for (ICF/MR) level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) The tooth must be ~~fractured or~~ decayed to such an extent to prevent proper cuspal or incisal function.

(ii) The clinical crown is fractured or destroyed ~~by the above elements~~ by one-half or more.

(iii) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered.

(B) The conditions listed in (A)(i) through (A)(iii) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleanable margins, there is invasion of the biologic width, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel cores are not allowed for molar or pre-molar teeth.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

~~(F) Ceramic metal based crowns will be considered only for tooth numbers 4 through 13 and 21 through 28.~~

~~(G) Porcelain/Ceramic substrate crowns are allowed on maxillary and mandibular incisors only.~~

~~(H) Full cast metal crowns are treatment for all posterior teeth,~~

(~~I~~F) Provider is responsible for replacement or repair of all ~~cast~~ crowns if ~~due to~~ failure is caused by poor laboratory processes or procedure by provider for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of three or more missing permanent teeth in the same arch for members 16 through 20 years of age. Provider must indicate tooth number to be replaced and teeth to be clasped.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or three or more missing teeth in the same arch for members 12 through 16 years of age and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care. Provider must indicate tooth numbers to be replaced and teeth to be clasped. This appliance includes all necessary clasps and rests.

(5) **Occlusal guard.** Narrative of clinical findings must be sent with prior authorization request.

(6) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members 17 through 20 years of age where the bite relationship precludes the use of removable partial dentures are considered. Members must have excellent oral hygiene documented in the requesting provider's records. Provider is responsible for any needed follow up for a period of five years post insertion.

(7) **Periodontal scaling and root planing.** This procedure requires that 50% or more of the six point measurements be five millimeters or greater and must involve two or more teeth per quadrant for consideration. This procedure is allowed on members 12 to 20 years of age and requires anesthesia and some soft tissue removal. The procedure is not allowed in conjunction with any other periodontal surgery. Allowance may be made for submission of required authorization data post treatment if the member has a medical or emotional problem that requires sedation.

(8) **Additional prophylaxis.** The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a member for one additional prophylaxis per year:

(A) dilantin hyperplasia;

(B) cerebral palsy;

(C) ~~mental retardation~~intellectual disabilities;

(D) juvenile periodontitis.

[OAR Docket #12-615; filed 5-10-12]

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

[OAR Docket #12-617]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 85. ADvantage Waiver Program Services
317:30-5-763.[AMENDED]
(Reference APA WF # 11-39A)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)

DATES:
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N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
OHCA rules for the ADvantage Waiver are revised to remove language allowing Hospice when the member is in a nursing facility receiving ADvantage Facility Based Extended Respite and remove respiratory therapy as an allowable service within the waiver. These services are removed due to lack of utilization. Additionally, rules are revised to remove language allowing for reimbursement to providers of case management transition services when the member fails to transition into the ADvantage waiver program. Finally, language is removed requiring transportation to be required by Adult Day Health Centers, as members have access to SoonerRide services. The majority of rule revisions are necessary to align OHCA policy with revised operational procedures required by the Centers for Medicare and Medicaid Services.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 85. ADVANTAGE PROGRAM WAIVER SERVICES

317:30-5-763. Description of services

Services included in the ADvantage Program are as follows:

(1) **Case Management.**

(A) Case Management services are services that assist a member in gaining access to medical, social, educational or other services, regardless of payment source of services, that may benefit the member in maintaining health and safety. Case managers initiate and oversee necessary assessments and reassessments to establish or reestablish waiver program eligibility. Case managers develop the member's comprehensive plan of care, listing only services which are necessary to prevent institutionalization of the member, as determined through assessments. Case managers initiate the addition of necessary services or deletion of unnecessary services, as dictated by the member's condition and available support. Case managers monitor the member's condition to ensure delivery and appropriateness of services and initiate plan of care reviews. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care and, as appropriate, periodically monitors the member's progress during the institutional stay and helps the member transition from institution to home by updating the service plan and preparing services to start on the date the member is discharged from the institution. Case Managers must meet ADvantage Program minimum requirements for qualification and training prior to providing services to ADvantage members. Prior to providing services to members receiving Consumer-Directed Personal Assistance Services and Supports (CD-PASS), Case Managers are required to receive training and demonstrate knowledge regarding CD-PASS service delivery model, "Independent Living Philosophy" and demonstrate competency in Person-centered planning.

(B) Providers may only claim time for billable Case Management activities described as follows:

(i) A billable case management activity is any task or function defined under OAC 317:30-5-763(1)(A) that only an ADvantage case manager because of skill, training or authority, can perform on behalf of a member;

(ii) Ancillary activities such as clerical tasks like mailing, copying, filing, faxing, drive time or supervisory/administrative activities are not billable case management activities, although the administrative cost of these activities and other normal and customary business overhead costs have been included in the reimbursement rate for billable activities.

(C) Case Management services are prior authorized and billed per 15-minute unit of service using the rate associated with the location of residence of the member served.

(i) Standard Rate: Case Management services are billed using a Standard rate for reimbursement for billable service activities provided to a member who resides in a county with population density greater than 25 persons per square mile.

(ii) Very Rural/Difficult Service Area Rate: Case Management services are billed using a Very Rural/Difficult Service Area rate for billable service activities provided to a member who resides in a county with population density equal to or less than 25 persons per square mile. An exception would be services to members that reside in Oklahoma Department of Human Services/Aging Services Division (OKDHS/ASD) identified zip codes in Osage County adjacent to metropolitan areas of Tulsa and Washington Counties. Services to these members are prior authorized and billed using the Standard rate.

(iii) The latest United States Census, Oklahoma Counties population data is the source for determination of whether a member resides in a county with a population density equal to or less than 25 persons per square mile, or resides in a county with a population density greater than 25 persons per square mile.

(2) **Respite.**

(A) Respite services are provided to members who are unable to care for themselves. They are provided on a short-term basis because of the absence or need for relief of the primary caregiver. Payment for respite care does not include room and board costs unless more than seven hours are provided in a nursing facility. Respite care will only be utilized when other sources of care and support have been exhausted. Respite care will only be listed on the plan of care when it is necessary to prevent institutionalization of the member. Units of services are limited to the number of units approved on the plan of care.

(B) In-Home Respite services are billed per 15-minute unit service. Within any one-day period, a minimum of eight units must be provided with a maximum of 28 units provided. The service is provided in the member's home.

(C) Facility-Based Extended Respite is filed for a per diem rate, if provided in Nursing Facility. Extended Respite must be at least eight hours in duration.

(D) In-Home Extended Respite is filed for a per diem rate. A minimum of eight hours must be provided in the member's home.

(3) **Adult Day Health Care.**

(A) Adult Day Health Care is furnished on a regularly scheduled basis for one or more days per week

in an outpatient setting. It provides both health and social services which are necessary to ensure the optimal functioning of the member. Physical, occupational, ~~respiratory~~ and/or speech therapies may only be provided as an enhancement to the basic Adult Day Health Care service when authorized by the plan of care and billed as a separate procedure. Meals provided as part of this service do not constitute a full nutritional regimen. ~~Transportation between the member's residence and the service setting is provided as a part of Adult Day Health Care.~~ Personal Care service enhancement in Adult Day Health Care is assistance in bathing and/or hair washing authorized by the plan of care and billed as a separate procedure. Most assistance with activities of daily living, such as eating, mobility, toileting and nail care, are services that are integral to the Adult Day Health Care service and are covered by the Adult Day Health Care basic reimbursement rate. Assistance with bathing and/or hair care is not a usual and customary adult day health care service. Enhanced personal care in adult day health care for assistance with bathing and/or hair washing will be authorized when an ADvantage waiver member who uses adult day health care requires assistance with bathing and/or hair washing to maintain health and safety.

(B) Adult Day Health Care is a 15-minute unit. No more than 6 hours are authorized per day. The number of units of service a member may receive is limited to the number of units approved on the member's approved plan of care.

(C) Adult Day Health Care Therapy Enhancement is a maximum one session per day unit of service.

(D) Adult Day Health Personal Care Enhancement is a maximum one per day unit of bathing and/or hair washing service.

(4) **Environmental Modifications.**

(A) Environmental Modifications are physical adaptations to the home, required by the member's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the home and without which, the member would require institutionalization. Adaptations or improvements to the home which are not of direct medical or remedial benefit to the waiver member are excluded.

(B) All services require prior authorization.

(5) **Specialized Medical Equipment and Supplies.**

(A) Specialized Medical Equipment and Supplies are devices, controls, or appliances specified in the plan of care, which enable members to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. Also included are items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid state plan. This service excludes any equipment and/or supply items which are not of direct medical or remedial benefit to the waiver member. This service is necessary to prevent institutionalization.

(B) Specialized Medical Equipment and Supplies are billed using the appropriate HCPC procedure code. Reoccurring supplies which are shipped to the member are compensable only when the member remains eligible for waiver services, continues to reside in the home and is not institutionalized in a hospital, skilled nursing facility or nursing home. It is the provider's responsibility to verify the member's status prior to shipping these items. Payment for medical supplies is limited to the Medicare rate, or the SoonerCare rate, or actual acquisition cost plus 30 percent. All services must be prior authorized.

(6) **Advanced Supportive/Restorative Assistance.**

(A) Advanced Supportive/Restorative Assistance services are maintenance services to assist a member who has a chronic, yet stable, condition. These services assist with activities of daily living which require devices and procedures related to altered body functions. This service is for maintenance only and is not utilized as a treatment service.

(B) Advanced Supportive/Restorative Assistance service is billed per 15-minute unit of service. The number of units of this service a member may receive is limited to the number of units approved on the plan of care.

(7) **Nursing.**

(A) Nursing services are services listed in the plan of care which are within the scope of the Oklahoma Nursing Practice Act and are provided by a registered professional nurse, or licensed practical or vocational nurse under the supervision of a registered nurse, licensed to practice in the State. Nursing services includes skilled nursing and/or private duty nursing. Skilled nursing is provided on an intermittent or part-time basis. Private duty nursing is individual and continuous care provided to a participant at home by licensed nurses. The provision of the nursing service will work to prevent or postpone the institutionalization of the member.

(B) Nursing services are services of a maintenance or preventive nature provided to members with stable, chronic conditions. These services are not intended to treat an acute health condition and may not include services which would be reimbursable under either Medicaid or Medicare's Home Health Program. This service primarily provides nurse supervision to the Personal Care Assistant or to the Advanced Supportive/Restorative Assistance Aide and assesses the member's health and prescribed medical services to ensure that they meet the member's needs as specified in the plan of care. A skilled nursing assessment/evaluation on-site visit is made to each member for whom Advanced Supportive/Restorative Assistance services are authorized to evaluate the condition of the

member and medical appropriateness of services. An assessment/evaluation visit report will be made to the ADvantage Program case manager in accordance with review schedule determined in consultation between the Case Manager and the Skilled Nurse, to report the member's condition or other significant information concerning each advanced supportive/restorative care member.

(i) The ADvantage Program case manager may recommend authorization of Skilled Nursing services as part of the interdisciplinary team planning for the member's service plan and/or assessment/evaluation of:

(I) the member's general health, functional ability and needs and/or

(II) the adequacy of personal care and/or advanced supportive/restorative assistance services to meet the member's needs including providing on-the-job training and competency testing for personal care or advanced supportive/restorative care aides in accordance with rules and regulations for delegation of nursing tasks as established by the Oklahoma Board of Nursing.

(ii) In addition to assessment/evaluation, the ADvantage Program case manager may recommend authorization of Skilled Nursing services for the following:

(I) preparing a one-week supply of insulin syringes for a blind diabetic who can safely self-inject the medication but cannot fill his/her own syringe. This service would include monitoring the member's continued ability to self-administer the insulin;

(II) preparing oral medications in divided daily compartments for a member who self-administers prescribed medications but needs assistance and monitoring due to a minimal level of disorientation or confusion;

(III) monitoring a member's skin condition when a member is at risk for skin breakdown due to immobility or incontinence, or the member has a chronic stage II decubitus ulcer requiring maintenance care and monitoring;

(IV) providing nail care for the diabetic member or member with circulatory or neurological compromise;

(V) providing consultation and education to the member, member's family and/or other informal caregivers identified in the service plan, regarding the nature of the member's chronic condition. Provide skills training (including return skills demonstration to establish competency) to the member, family and/or other informal caregivers as specified in the service plan for preventive and rehabilitative care procedures.

(C) Nursing service can be billed for service plan development and/or assessment/evaluation services or, for other services within the scope of the Oklahoma Nursing Practice Act including private duty nursing. Nursing services are billed per 15-minute unit of service. A specific procedure code is used to bill for assessment/evaluation/service plan development skilled nursing services and other procedure codes are used to bill for all other authorized nursing services. A maximum of eight units per day of skilled nursing for assessment/evaluation and/or service plan development are allowed. An agreement by a provider to perform a nurse evaluation is also an agreement, to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted. Reimbursement for a nurse evaluation is denied if the provider that produced the nurse evaluation fails to provide the nurse assessment identified in the Medicaid in-home care services for which the provider is certified and contracted.

(8) **Home Delivered Meals.**

(A) Home Delivered Meals provide one meal per day. A home delivered meal is a meal prepared in advance and brought to the member's home. Each meal must have a nutritional content equal to at least one third of the Recommended Daily Allowance as established by the Food and Nutrition Board of the National Academy of Sciences. Meals are only provided to members who are unable to prepare meals and lack an informal provider to do meal preparation.

(B) Home Delivered Meals are billed per meal, with one meal equaling one unit of service. The limit of the number of units a member is allowed to receive is limited on the member's plan of care. The provider must obtain a signature from the member or the member's representative at the time the meals are delivered. In the event that the member is temporarily unavailable (i.e., doctor's appointment, etc.) and the meal is left, the provider must document the reason a signature is not obtained. The signature logs must be available for review.

(9) **Occupational Therapy ~~services~~Services.**

(A) Occupational Therapy services are those services that increase functional independence by enhancing the development of adaptive skills and performance capacities of members with physical disabilities and related psychological and cognitive impairments. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves the therapeutic use of self-care, work and play activities and may include modification of the tasks or environment to enable the member to achieve maximum independence, prevent further disability, and maintain health. Under a physician's order, a licensed occupational therapist evaluates the member's rehabilitation potential and

develops an appropriate written therapeutic regimen. The regimen utilizes paraprofessional occupational therapy assistant services, within the limits of their practice, working under the supervision of the licensed occupational therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Occupational Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

(10) **Physical Therapy ~~services~~Services.**

(A) Physical Therapy services are those services that prevent physical disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Treatment involves use of physical therapeutic means such as massage, manipulation, therapeutic exercise, cold or heat therapy, hydrotherapy, electrical stimulation and light therapy. Under a physician's order, a licensed physical therapist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional physical therapy assistant services, within the limits of their practice, working under the supervision of the licensed physical therapist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Physical Therapy services are billed per 15-minute units of service. Payment is not allowed solely for written reports or record documentation.

(11) **Speech and Language Therapy Services.**

(A) Speech/Language Therapy services are those that prevent speech and language communication disability through the evaluation and rehabilitation of members disabled by pain, disease or injury. Services are provided in the member's home and are intended to help the member achieve greater independence to reside and participate in the community. Services involve use of therapeutic means such as evaluation, specialized treatment, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a licensed Speech/Language Pathologist evaluates the member's rehabilitation potential and develops an appropriate, written therapeutic regimen. The regimen utilizes paraprofessional therapy assistant services within the limits of their practice, working under the supervision of the licensed Speech/Language Pathologist. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The Pathologist will ensure monitoring and documentation of the member's rehabilitative progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.

(B) Speech/Language Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.

~~(12)~~ **~~Respiratory Therapy Services.~~**

~~(A) Respiratory therapy services are provided for a member who, but for the availability of in-home respiratory services, would require respiratory care as an inpatient in a hospital or nursing facility. Services are provided in the member's home under the care of a physician who is familiar with the technical and medical components of home ventilator support and the physician must determine medically that in-home respiratory care is safe and feasible for the member. Treatment involved use of therapeutic means such as: evaluation, respiratory treatments, chest physiotherapy, and/or development and oversight of a therapeutic maintenance program. Under a physician's order, a registered respiratory therapist evaluates the member and develops an appropriate, written therapeutic regimen. The regimen includes education and training for informal caregivers to assist with and/or maintain services, where appropriate. The therapist will ensure monitoring and documentation of the member's progress and will report to the member's case manager and physician to coordinate necessary addition and/or deletion of services, based on the member's condition and ongoing rehabilitation potential.~~

~~(B) Respiratory Therapy services are billed per 15-minute unit of service. Payment is not allowed solely for written reports or record documentation.~~

(~~13~~12) **Hospice Services.**

(A) Hospice is palliative and/or comfort care provided to the member and his/her family when a physician certifies that the member has a terminal illness and has six months or less to live and orders hospice care. ADvantage Hospice Care is authorized for a six month period and requires a physician certification of a terminal illness and orders of hospice care. If the member requires more than six months of hospice care, a physician or nurse practitioner must have a face-to-face visit with the member thirty days prior to the initial hospice authorization end date and re-certify that the member has a terminal illness and has six months or less to live and orders additional hospice care. After the initial authorization period,

additional periods of ADvantage Hospice may be authorized for a maximum of 60 day increments with physician certification that the member has a terminal illness and has six months or less to live. A member's service plan that includes hospice care must comply with waiver requirements to be within total service plan cost limits.

(B) A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. The member signs a statement choosing hospice care instead of routine medical care that has the objective to treat and cure the member's illness. Once the member has elected hospice care, the hospice medical team assumes responsibility for the member's medical care for the terminal illness in the home environment. Hospice care services include nursing care, physician services, medical equipment and supplies, drugs for symptom control and pain relief, home health aide and personal care services, physical, occupational and/or speech therapy, medical social services, dietary counseling and grief and bereavement counseling to the member and/or family. A Hospice plan of care must be developed by the hospice team in conjunction with the member's ADvantage case manager before hospice services are provided. The hospice services must be related to the palliation or management of the member's terminal illness, symptom control, or to enable the individual to maintain activities of daily living and basic functional skills. ~~ADvantage Hospice may be provided to the member in a Nursing Facility (NF) only when the member is placed in the NF for ADvantage Facility Based Extended Respite. Hospice provided as part of Facility Based Extended Respite may not be reimbursed for more than five days during any 30 day period.~~ A member that is eligible for Medicare Hospice provided as a Medicare Part A benefit, is not eligible to receive ADvantage Hospice services.

(C) Hospice services are billed per diem of service for days covered by a Hospice plan of care and during which the hospice provider is responsible for providing hospice services as needed by the member or member's family.

(~~14~~13) **ADvantage Personal Care.**

(A) ADvantage Personal Care is assistance to a member in carrying out activities of daily living such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. Personal Care services do not include service provision of a technical nature, i.e. tracheal suctioning, bladder catheterization, colostomy irrigation, and operation/maintenance of equipment of a technical nature.

(B) ADvantage Home Care Agency Skilled Nursing staff working in coordination with an ADvantage Case Manager are responsible for development and monitoring of the member's Personal Care plan.

(C) ADvantage Personal Care services are prior authorized and billed per 15-minute unit of service with units of service limited to the number of units on the ADvantage approved plan of care.

(~~15~~14) **Personal Emergency Response System.**

(A) Personal Emergency Response System (PERS) is an electronic device which enables certain individuals at high risk of institutionalization to secure help in an emergency. The individual may also wear a portable "help" button to allow for mobility. The system is connected to the person's phone and programmed to signal, in accordance with member preference, a friend, a relative or a response center once a "help" button is activated. The response center is staffed by trained professionals. For an ADvantage Program member to be eligible to receive PERS service, the member must meet all of the following service criteria:

(i) a recent history of falls as a result of an existing medical condition that prevents the individual from getting up from a fall unassisted;

(ii) lives alone and has no regular caregiver, paid or unpaid, and therefore is left alone for long periods of time;

(iii) demonstrates capability to comprehend the purpose of and activate the PERS;

(iv) has a health and safety plan detailing the interventions beyond the PERS to assure the member's health and safety in his/her home;

(v) has a disease management plan to implement medical and health interventions that reduce the possibility of falls by managing the member's underlying medical condition causing the falls; and,

(vi) the service avoids premature or unnecessary institutionalization of the member.

(B) PERS services are billed using the appropriate HCPC procedure code for installation, monthly service or purchase of PERS. All services are prior authorized in accordance with the ADvantage approved plan of care.

(~~16~~15) **Consumer-Directed Personal Assistance Services and Support (CD-PASS).**

(A) Consumer-Directed Personal Assistance Services and Supports are Personal Services Assistance and Advanced Personal Services Assistance that enable an individual in need of assistance to reside in their home and in the community of their choosing rather than in an institution and to carry out functions of daily living, self care, and mobility. CD-PASS services are delivered as authorized on the service

plan. The member employs the Personal Services Assistant (PSA) and/or the Advanced Personal Services Assistant (APSA) and is responsible, with assistance from ADvantage Program Administrative Financial Management Services (FMS), for ensuring that the employment complies with State and Federal Labor Law requirements. The member may designate an adult family member or friend, an individual who is not a PSA or APSA to the member, as an "authorized representative" to assist in executing these employer functions. The member:

(i) recruits, hires and, as necessary, discharges the PSA or APSA;

(ii) provides instruction and training to the PSA or APSA on tasks to be done and works with the Consumer Directed Agent/Case Manager to obtain ADvantage skilled nursing services assistance with training when necessary. Prior to performing an Advanced Personal Services Assistance task for the first time, the APSA must demonstrate competency in the tasks in an on-the-job training session conducted by the member and the member must document the attendant's competency in performing each task in the ASPA's personnel file;

(iii) determines where and how the PSA or APSA works, hours of work, what is to be accomplished and, within Individual Budget Allocation limits, wages to be paid for the work;

(iv) supervises and documents employee work time; and,

(v) provides tools and materials for work to be accomplished.

(B) The service Personal Services Assistance may include:

(i) assistance with mobility and with transfer in and out of bed, wheelchair or motor vehicle, or both;

(ii) assistance with routine bodily functions that may include:

(I) bathing and personal hygiene;

(II) dressing and grooming;

(III) eating including meal preparation and cleanup;

(iii) assistance with homemaker type services that may include shopping, laundry, cleaning and seasonal chores;

(iv) companion type assistance that may include letter writing, reading mail and providing escort or transportation to participate in approved activities or events. "Approved activities or events" means community civic participation guaranteed to all citizens including but not limited to, exercise of religion, voting or participation in daily life activities in which exercise of choice and decision making is important to the member that may include shopping for food, clothing or other necessities, or for participation in other activities or events that are specifically approved on the service plan.

(C) Advanced Personal Services Assistance are maintenance services provided to assist a member with a stable, chronic condition with activities of daily living when such assistance requires devices and procedures related to altered body function if such activities, in the opinion of the attending physician or licensed nurse, may be performed if the individual were physically capable, and the procedure may be safely performed in the home. Advanced Personal Services Assistance is a maintenance service and should never be used as a therapeutic treatment. Members who develop medical complications requiring skilled nursing services while receiving Advanced Personal Services Assistance should be referred to their attending physician who may, if appropriate, order home health services. The service of Advanced Personal Services Assistance includes assistance with health maintenance activities that may include:

(i) routine personal care for persons with ostomies (including tracheotomies, gastrostomies and colostomies with well-healed stoma) and external, indwelling, and suprapubic catheters which includes changing bags and soap and water hygiene around ostomy or catheter site;

(ii) remove external catheters, inspect skin and reapplication of same;

(iii) administer prescribed bowel program including use of suppositories and sphincter stimulation, and enemas (Pre-packaged only) with members without contraindicating rectal or intestinal conditions;

(iv) apply medicated (prescription) lotions or ointments, and dry, non-sterile dressings to unbroken skin;

(v) use lift for transfers;

(vi) manually assist with oral medications;

(vii) provide passive range of motion (non-resistive flexion of joint) delivered in accordance with the plan of care, unless contraindicated by underlying joint pathology;

(viii) apply non-sterile dressings to superficial skin breaks or abrasions; and

(ix) use Universal precautions as defined by the Center for Disease Control.

(D) The service Financial Management Services are program administrative services provided to participating CD-PASS employer/members by the OKDHS/ASD. Financial Management Services are employer related assistance that provides Internal Revenue Service (IRS) fiscal reporting agent and other financial management tasks and functions including, but not limited to:

(i) employer payroll, at a minimum of semi monthly, and associated withholding for taxes, or for other payroll withholdings performed on behalf of the member as employer of the PSA or APSA;

(ii) other employer related payment disbursements as agreed to with the member and in accordance with the member's Individual Budget Allocation;

(iii) responsibility for obtaining criminal and abuse registry background checks, on behalf of the member, on prospective hires for PSAs or APSAs;

(iv) providing to the member, as needed, assistance with employer related cognitive tasks, decision-making and specialized skills that may include assistance with Individual Budget Allocation planning and support for making decisions including training and providing reference material and consultation regarding employee management tasks such as recruiting, hiring, training and supervising the member's Personal Services Assistant or Advanced Personal Services Assistant; and

(v) for making available Hepatitis B vaccine and vaccination series to PSA and APSA employees in compliance with OSHA standards.

(E) The service of Personal Services Assistance is billed per 15-minute unit of service. The number of units of PSA a member may receive is limited to the number of units approved on the Service Plan.

(F) The service of Advanced Personal Services Assistance is billed per 15-minute unit of service. The number of units of APSA a member may receive is limited to the number of units approved on the Service Plan.

(~~17~~16) **Institution Transition Services.**

(A) Institution Transition Services are those services that are necessary to enable an individual to leave the institution and receive necessary support through ADvantage waiver services in their home and/or in the community.

(B) Institution Transition Case Management Services are services as described in OAC 317:30-5-763(1) required by the individual's plan of care, which are necessary to ensure the health, welfare and safety of the individual, or to enable the individual to function with greater independence in the home, and without which, the individual would continue to require institutionalization. ADvantage Transition Case Management Services assist institutionalized individuals that are eligible to receive ADvantage services in gaining access to needed waiver and other State plan services, as well as needed medical, social, educational and other services to assist in the transition, regardless of the funding source for the services to which access is gained. Transition Case Management Services may be authorized for periodic monitoring of an ADvantage member's progress during an institutional stay, and for assisting the member transition from institution to home by updating the service plan, including necessary Institution Transition Services to prepare services and supports to be in place or to start on the date the member is discharged from the institution. Transition Case Management Services may be authorized to assist individuals that have not previously received ADvantage services but have been referred by the OKDHS/ASD to the Case Management Provider for assistance in transitioning from the institution to the community with ADvantage services support.

(i) Institution Transition Case Management services are prior authorized and billed per 15-minute unit of service using the appropriate HCPC and modifier associated with the location of residence of the member served as described in OAC 317:30-5-763(1)(C).

(ii) A unique modifier code is used to distinguish Institution Transition Case Management services from regular Case Management services.

(C) Institutional Transition Services may be authorized and reimbursed under the following conditions:

(i) The service is necessary to enable the individual to move from the institution to their home;

(ii) The individual is eligible to receive ADvantage services outside the institutional setting;

(iii) Institutional Transition Services are provided to the individual within 180 days of discharge from the institution;

(iv) Transition Services provided while the individual is in the institution are to be claimed as delivered on the day of discharge from the institution.

(D) If the member has received Institution Transition Services but fails to enter the waiver, any Institution Transition Services ~~authorized and~~ provided are ~~reimbursed as "Medicaid administrative" costs and providers follow special procedures specified by the OKDHS/ASD to bill for services provided~~not reimbursable.

(~~18~~17) **Assisted Living Services.**

(A) Assisted Living Services are personal care and supportive services that are furnished to waiver members who reside in a homelike, non-institutional setting that includes 24-hour on-site response capability to meet scheduled or unpredictable resident needs and to provide supervision, safety and security. Services also include social and recreational programming and medication assistance (to the extent permitted under State law). The assisted living services provider is responsible for coordinating services provided by third parties to ADvantage members in the assisted living center. Nursing services are incidental rather than integral to the provision of assisted living services. ADvantage reimbursement for Assisted Living Services includes services of personal care, housekeeping, laundry, meal preparation, periodic nursing evaluations, nursing supervision during nursing intervention, intermittent or unscheduled nursing care, medication administration, assistance with cognitive orientation, assistance with transfer and ambulation, planned programs for socialization,

activities and exercise and for arranging or coordinating transportation to and from medical appointments. Services, except for planned programs for socialization, activities and exercise, are to meet specific needs of the participant as determined through individualized assessment and documented on the participant's service plan.

(B) The ADvantage Assisted Living Services philosophy of service delivery promotes service member choice, and to the greatest extent possible, service member control. Members have control over their living space and choice of personal amenities, furnishing and activities in their residence. The Assisted Living Service provider's documented operating philosophy, including policies and procedures, must reflect and support the principles and values associated with the ADvantage assisted living philosophy and approach to service delivery that emphasizes member dignity, privacy, individuality, and independence.

(C) ADvantage Assisted Living required policies for Admission/Termination of services and definitions.

(i) ADvantage-certified Assisted Living Centers (ALCs) are required to accept all eligible ADvantage members who choose to receive services through the ALC subject only to issues relating to:

(I) unit availability;

(II) the compatibility of the participant with other residents; and

(III) the center's ability to accommodate residents who have behavior problems, wander, or have needs that exceed the services the center provides.

(ii) The ALC may specify the number of units the provider is making available to service ADvantage participants.

(iii) Mild or moderate cognitive impairment of the applicant is not a justifiable reason to deny ALC admission. Centers are required to specify whether they are able to accommodate individuals who have behavior problems or wander. Denial of admission due to a determination of incompatibility must be approved by the case manager and the ADvantage Administration (AA). Appropriateness of placement is not a unilateral determination by the ALC. The ADvantage Case Manager, the member and/or member's designated representative and the ALC in consultation determine the appropriateness of placement.

(iv) The ALC is responsible for meeting the member's needs for privacy and dignity. Inability to meet those needs will not be recognized as a reason for determining that an ADvantage participant's placement is inappropriate. The ALC agrees to provide or arrange and coordinate all of the services listed in the description of assisted living center services in the Oklahoma State Department of Health regulations (OAC 310:663-3-3) except for specialized services.

(v) In addition, the ADvantage participating ALC agrees to provide or coordinate the following services:

(I) Provide an emergency call system for each participating ADvantage member;

(II) Provide up to three meals per day plus snacks sufficient to meet nutritional requirements, including modified special diets, appropriate to members' needs and choices; and

(III) Arrange or coordinate transportation to and from medical appointments.

(vi) The provider may offer any specialized service or unit for residents with Alzheimer's disease and related dementias, physical disabilities or other special needs that the facility intends to market.

(vii) If the provider arranges and coordinates services for members, the provider is obligated to assure the provision of those services.

(viii) Under OAC 310:663-1-2, "personal care" is defined as "assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person". For ADvantage Assisted Living Services, assistance with "other personal needs" in this definition includes assistance with toileting, grooming and transferring and the term "assistance" is clarified to mean hands-on help in addition to supervision.

(ix) The specific Assisted Living Services assistance provided along with amount and duration of each type of assistance is based upon the individual member's assessed need for service assistance and is specified in the ALC's service plan which is incorporated as supplemental detail into the ADvantage comprehensive service plan. The ADvantage Case Manager in cooperation with the Assisted Living Center professional staff develops the service plan to meet member needs. As member needs change, the service plan is amended consistent with the assessed, documented need for change in services.

(x) Definition of Inappropriate ALC Placement. Placement or continued placement of an ADvantage member in an ALC is inappropriate if any one or more of the following conditions exist:

(I) The member's needs exceed the level of services the center provides. Documentation must support ALC efforts to provide or arrange for the required services to accommodate participant needs;

(II) The member exhibits behavior or actions that repeatedly and substantially interferes with the rights or well being of other residents and the ALC has documented efforts to resolve

behavior problems including medical interventions, behavioral interventions and increased staffing interventions. Documentation must support that ALC attempted interventions to resolve behavior problems;

(III) The member has a medical condition that is complex, unstable or unpredictable and treatment cannot be appropriately developed and implemented in the assisted living environment. Documentation must support that ALC attempted to obtain appropriate care for the member; or

(IV) The member fails to pay room and board charges and/or the OKDHS determined vendor payment obligation.

(xi) Termination of residence when inappropriately placed. Once a determination is made that a member is inappropriately placed, the assisted living center must inform the member and/or the member's representative, if any, and the member's ADvantage Case Manager. The ALC must develop a discharge plan in consultation with the member, the member's support network and the ADvantage Case Manager. The ALC and Case Manager must ensure that the discharge plan includes strategies for providing increased services, when appropriate to minimize risk and meet the higher care needs of members awaiting a move out of the ALC, if reason for discharge is inability to meet member needs. If voluntary termination of residency is not arranged, the ALC must provide written notice to the member and to the member's representative, with a copy to the member's ADvantage Case Manager, giving the member 30 days notice of the ALC's intent to terminate the residency agreement and move the member to a more appropriate care provider. The 30 day requirement shall not apply when emergency termination of the residency agreement is mandated by the member's immediate health needs or when termination of the residency agreement is necessary for the physical safety of the member or other residents of the ALC. The written notice of involuntary termination of residency for reasons of inappropriate placement must include:

(I) a full explanation of the reasons for the termination of residency;

(II) the date of the notice;

(III) the date notice was given to the member and the member's representative;

(IV) the date by which the member must leave the ALC; and

(V) notification of appeal rights and process for submitting appeal of termination of Medicaid Assisted Living services to the OHCA.

(D) ADvantage Assisted Living Services provider standards in addition to licensure standards.

(i) Physical environment

(I) The ALC must provide lockable doors on the entry door of each unit and a lockable compartment within each member unit for valuables. Member residents must have exclusive rights to their units with lockable doors at the entrance of their individual and/or shared unit except in the case of documented contraindication. Units may be shared only if a request to do so is initiated by the member resident.

(II) The ALC must provide each unit with a means for each member resident to control the temperature in the individual living unit through the use of a damper, register, thermostat, or other reasonable means that is under the control of the resident and that preserves resident privacy, independence and safety, provided that the Oklahoma State Department of Health may approve an alternate means based on documentation that the design of the temperature control is appropriate to the special needs of each member who has an alternate temperature control.

(III) For ALCS built prior to January 1, 2008, each ALC individual residential unit must have a minimum total living space (including closets and storage area) of 250 square feet; for ALCs built after December 31, 2007, each ALC individual residential unit must have a minimum total living space (including closets and storage area) of 360 square feet.

(IV) The ALC shall provide a private bathroom for each living unit which must be equipped with one lavatory, one toilet, and one bathtub or shower stall.

(V) The ALC must provide at a minimum a kitchenette, defined as a space containing a refrigerator, cooking appliance (microwave is acceptable), and adequate storage space for utensils.

(VI) The member is responsible for furnishing their rental unit. If a member is unable to supply basic furnishings defined as a bed, dresser, nightstand, chairs, table, trash can and lamp, or if the member supplied furnishings pose a health or safety risk, the member's Case Manager in coordination with the ALC must assist the member in obtaining basic furnishings for the unit.

(VII) The ALC must meet the requirements of all applicable federal and state laws and regulations including, but not limited to, the state and local sanitary codes, state building and fire safety codes and laws and regulations governing use and access by persons with disabilities.

(VIII) The ALC must ensure the design of common areas accommodates the special needs

of their resident population and that the residential unit accommodates the special needs of the individual in compliance with ADA Accessibility Guidelines (28 CFR Part 36 Appendix A).

(IX) The ALC must provide adequate and appropriate social and recreational space for residents and the common space must be proportionate to the number of residents and appropriate for the resident population.

(X) The ALC must provide appropriately monitored outdoor space for resident use.

(ii) Sanitation

(I) The ALC must maintain the facility, including its individual units, that is clean, safe, sanitary, insect and rodent free, odorless, and in good repair at all times.

(II) The ALC must maintain buildings and grounds in a good state of repair and in a safe and sanitary condition, and in compliance with the requirements of applicable regulations, by-laws and codes.

(III) The ALC stores clean laundry in a manner that prevents contamination and changes linens at time intervals necessary to avoid health issues.

(IV) The ALC must provide housekeeping in member units that maintains a safe, clean and sanitary environment.

(V) The ALC must have policies and procedures for members' pets.

(iii) Health and Safety

(I) The ALC must provide building security that protects residents from intruders with security measures appropriate to building design, environment risk factors and the resident population.

(II) The ALC must respond immediately and appropriately to missing residents, accidents, medical emergencies or deaths.

(III) The ALC must have a plan in place to prevent, contain and report any diseases that are considered to be infectious and/or are listed as diseases that must be reported to the Oklahoma State Department of Health.

(IV) The ALC must adopt policies for prevention of abuse, neglect and exploitation that include screening, training, prevention, investigation, protection during investigation and reporting.

(V) The ALC must provide services and facilities that accommodate the needs of resident to safely evacuate in the event of fires or other emergencies.

(VI) The ALC must ensure that staff are trained to respond appropriately to emergencies.

(VII) The ALC staff must ensure that fire safety requirements are met.

(VIII) The ALC must offer meals that provide balanced and adequate nutrition for residents.

(IX) The ALC must adopt safe practices for the preparation and delivery of meals;

(X) The ALC must provide a 24-hour response to personal emergencies that is appropriate to the needs of the resident population.

(XI) The ALC must provide safe transportation to and from ALC sponsored social/recreational outings.

(iv) Staff to resident ratios

(I) The ALC must ensure that a sufficient number of trained staff be on duty, awake, and present at all times, 24 hours a day, seven days a week, to meet the needs of residents and to carry out all the processes listed in the ALC's written emergency and disaster preparedness plan for fires and other natural disasters.

(II) The ALC must ensure that staffing is sufficient to meet the needs of the ADvantage Program residents in accordance with each individual's ADvantage Service Plan.

(III) The ALC must have plans in place to address situations where there is a disruption to the ALC's regular work force.

(v) Staff training and qualifications

(I) The ALC must ensure that all staff have qualifications consistent with their job responsibilities.

(II) All staff assisting in, or responsible for, food service must have attended a food service training program offered or approved by the Oklahoma Department of Health;

(III) The ALC must provide staff orientation and ongoing training to develop and maintain the knowledge and skills of staff. All direct care and activity staff receive at least eight hours of orientation and initial training within the first month of their employment and at least four hours annually thereafter. Staff providing direct care on a dementia unit must receive four additional hours of dementia specific training. Annual first aid and CPR certification do not count towards the four hours of annual training.

(vi) Staff supervision

(I) The ALC must ensure delegation of tasks to non-licensed staff must be consistent and in compliance with all applicable State regulations including, but not limited to, the Oklahoma Nurse Practice Act and the OSDH Nurse Aide Certification rules.

(II) The ALC must ensure that, where the monitoring of food intake or therapeutic diets is provided at the prescribed services level, a registered dietitian monitors the member's health and nutritional status.

(vii) Resident rights

(I) The ALC must provide to each member and member's representative, at the time of admission, a copy of the resident statutory rights listed in O.S. 63-1-1918 amended to include additional rights and clarification of rights as listed in the ADvantage Consumer Assurances. A copy of the resident rights must be posted in an easily accessible, conspicuous place in the facility. The facility must ensure that its staff is familiar with, and observes, the resident rights.

(II) The ALC must conspicuously post for display in an area accessible to residents, employees and visitors, the assisted living center's complaint procedures and the name, address and telephone number of a person authorized to receive complaints. A copy of the complaint procedure must also be given to each resident, the resident's representative, or where appropriate, the court appointed guardian. The ALC must ensure that all employees comply with the ALC's complaint procedure.

(III) The ALC must provide to each member and member's representative, at the time of admission, information about Medicaid grievance/appeal rights including a description of the process for submitting a grievance/appeal of any decision that decreases Medicaid services to the member.

(viii) Incident reporting

(I) The ALC must maintain a record of incidents that occur and report incidents to the member's ADvantage Case Manager, to the ADvantage Program AA and to other entities as required by law or regulation.

(II) Incidents requiring report by licensed Assisted Living Centers are those defined by the Oklahoma State Department of Health (OSDH) in OAC 310:663-19-1.

(III) Reports of incidents must be made to the member's ADvantage Case Manager via facsimile or by telephone within one business day of the reportable incident's discovery. A follow-up report of the incident must be submitted via facsimile or mail to the member's ADvantage Case Manager within five business days after the incident. The final report must be filed with the member's ADvantage Case Manager and to the ADvantage Administration when the full investigation is complete not to exceed ten business days after the incident.

(IV) Each ALC having reasonable cause to believe that a member is suffering from abuse, neglect, exploitation, or misappropriation of member property must make a report to either the Oklahoma Department of Human Services, the office of the district attorney in the county in which the suspected abuse, neglect, exploitation, or property misappropriation occurred or the local municipal police department or sheriff's department as soon as the person is aware of the situation, in accordance with Section 10-104.A of Title 43A of Oklahoma Statutes. Reports should also be made to the OSDH, as appropriate, in accordance with the ALC's licensure rules.

(V) The preliminary incident report must at the minimum include who, what, when and where and the measures taken to protect the resident(s) during the investigation. The follow-up report must at the minimum include preliminary information, the extent of the injury or damage, if any, and preliminary findings of the investigation. The final report at the minimum includes preliminary and follow-up information, a summary of investigative actions representing a thorough investigation, investigative findings and conclusions based on findings; and corrective measures to prevent future occurrences. If necessary to omit items, the final report must include why items were omitted and when they will be provided.

(ix) Provision of or arrangement for necessary health services

(I) The ALC must arrange or coordinate transportation for members to and from medical appointments.

(II) The ALC must provide or coordinate with the member and the member's ADvantage Case Manager for delivery of necessary health services. The ADvantage Case Manager is responsible for monitoring that all health-related services required by the member as identified through assessment and documented on the service plan are provided in an appropriate and timely manner.

(E) Assisted Living Services are billed per diem of service for days covered by the ADvantage member's service plan and during which the Assisted Living Services provider is responsible for providing Assisted Living serviced as needed by the member. The per diem rate for the ADvantage assisted living services for a member will be one of three per diem rate levels based upon individual member's need for service - type intensity and frequency to address member ADL/IADL and health care needs. The rate level is based upon UCAT assessment by the member's ADvantage Case Manager employed by a Case Management agency that is independent of the Assisted Living Services provider.

[OAR Docket #12-617; filed 5-10-12]

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

[OAR Docket #12-607]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers And Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95.24. [AMENDED]
317:30-5-95.25. [AMENDED]
317:30-5-95.26. [AMENDED]
317:30-5-95.27. [AMENDED]
317:30-5-95.28. [AMENDED]
317:30-5-95.29. [AMENDED]
317:30-5-95.30. [AMENDED]
317:30-5-95.31. [AMENDED]
Part 21. Outpatient Behavioral Health Services
317:30-5-240. [AMENDED]
317:30-5-240.1. [AMENDED]
317:30-5-240.2. [AMENDED]
317:30-5-241. [AMENDED]
317:30-5-241.1. [AMENDED]
317:30-5-241.2. [AMENDED]
317:30-5-241.3. [AMENDED]
317:30-5-241.4. [AMENDED]
317:30-5-241.5. [AMENDED]
Part 25 Psychologist
317:30-5-276. [AMENDED]
Part 26. Licensed Behavioral Health Providers
317:30-5-281. [AMENDED]
Part 67. Behavioral Health Case Management Services
317:30-5-596. [AMENDED]
317:30-5-596.1. [AMENDED]
Part 83. Outpatient Behavioral Health Services in Therapeutic Foster Care Homes
317:30-5-741. [AMENDED]
(Reference APA WF # 11-27)
AUTHORITY:
The Oklahoma Health Care Authority Board; Then Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 308.2 of Title 75 of Oklahoma Statutes
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Subchapter 5. Individual Providers And Specialties
Part 6. Inpatient Psychiatric Hospitals
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317:30-5-95.25. [AMENDED]
317:30-5-95.26. [AMENDED]
317:30-5-95.27. [AMENDED]
317:30-5-95.28. [AMENDED]
317:30-5-95.29. [AMENDED]
317:30-5-95.30. [AMENDED]
317:30-5-95.31. [AMENDED]
Part 21. Outpatient Behavioral Health Services
317:30-5-240. [AMENDED]
317:30-5-240.1. [AMENEDED]
317:30-5-240.2. [AMENDED]
317:30-5-241. [AMENDED]
317:30-5-241.1. [AMENDED]
317:30-5-241.2. [AMENDED]
317:30-5-241.3. [AMENDED]
317:30-5-241.4. [AMENDED]
317:30-5-241.5. [AMENDED]
Part 25 Psychologist
317:30-5-276. [AMENDED]
Part 26 Licensed Behavioral Health Providers
317:30-5-281. [AMENDED]
Part 67. Behavioral Health Case Management Services
317:30-5-596. [AMENDED]
317:30-5-596.1. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Setting
317:30-5-741. [AMENDED]
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Gubernatorial approval:
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12-307
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Agency Behavioral Health rules are revised in order to sufficiently and accurately set forth the substantive requirements for providing covered SoonerCare behavioral health services. Provider credentials and coverage guidelines will be transferred from the current Behavioral Health Provider Manual to the Agency's Behavioral Health rules in order to comply with rule promulgation requirements set forth in the Oklahoma Administrative Procedures Act (APA). These revisions will not only ensure that the Agency remains in compliance with the APA, but also provides the Agency the necessary legal basis to successfully maintain program integrity. Additionally, Outpatient Behavioral Health, Psychologist and Licensed Behavioral Health Professional (LBHP) rules are being revised to remove the guidelines for obtaining authorizations to provide services. Authorization requirements will be placed in the Behavioral Health Provider Manual and the rule revisions will reference the manual. The authorization requirements are procedural in nature and are more appropriate in the context of a billing manual rather than the Agency's administrative rules.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95.24. ~~Pre-authorization~~Prior authorization of inpatient psychiatric services for children

(a) All inpatient psychiatric services for members under 21 years of age must be prior authorized by the OHCA or its designated agent. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Additional information will be required for a SoonerCare compensable approval on enhanced treatment units or in special population programs. Residential treatment at this level is a longer term treatment that requires a higher staff to member ratio because it is constant, intense, and immediate reinforcement of new behaviors to develop an understanding of the behaviors. The environment of specialized residential treatment centers requires special structure and configuration (e.g., sensory centers for autistic members) and specialized training for the staff in the area of the identified specialty. The physician will see the child at least one time a week. A PRTF will not be considered a specialty treatment program for SoonerCare without prior approval of the OHCA behavioral health unit. A treatment program that has been approved as a specialized treatment program must maintain medical records that document the degree and intensity of the psychiatric care delivered to the children.

(b) Criteria for classification as a specialized PRTF will require a staffing ratio of 1:3 at a minimum during awake hours and 1:6 during time residents are asleep with 24 hour nursing care supervised by a RN for management of behaviors and medical complications. The PRTF will be a secure unit, due to the complexity of needs and safety considerations. Admissions will be restricted to children that meet the medical necessity criteria for RTC and also meet at least two or more of the following:

(1) Have failed at other levels of care or have not been accepted at other levels of care;

(2) Behavioral, emotional, and cognitive problems requiring secure residential treatment that includes 1:1, 1:2, or 1:3 staffing due to the member being a danger to themselves and others, for impairments in socialization problems, communication problems, and restricted, repetitive and stereotyped behaviors. These symptoms are severe and intrusive enough that management and treatment in a less restrictive environment places the child and others in danger but, do not meet acute medical necessity criteria. These symptoms which are exhibited across multiple environments must include at least two or more of the following:

(A) Marked impairments in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction;

(B) Inability to regulate impulse control with frequent displays of aggression or other dangerous behavior toward self and/or others regularly;

(C) Failure to develop peer relationships appropriate to developmental level;

(D) Lack of spontaneously seeking to share enjoyment, interests, or achievements with other people;

(E) Lack of social or emotional reciprocity;

(F) Lack of attachment to caretakers;

(G) Require a higher level of assistance with activities of daily living requiring multiple verbal cues 50 percent of the time to complete tasks;

(H) Delay, or total lack of, the development of spoken language which is not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime;

(I) Marked impairment in individuals with adequate speech in the ability to initiate or sustain a conversation with others;

(J) Stereotyped and repetitive use of language or idiosyncratic language;

(K) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level;

(L) Encompassing preoccupation with one or more stereotyped and restricted pattern and interest that is abnormal in intensity of focus;

(M) Inflexible adherence to specific, nonfunctional routines or rituals;

(N) Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting or complex whole body movements);

(O) Persistent occupation with parts of objects;

(3) Member is medically stable, but has co-morbid medical conditions which require specialized medical care during treatment;

(4) Full scale IQ below 40 (profound mental retardation intellectual disability).

(c) Non-authorized inpatient psychiatric services will not be SoonerCare compensable.

(d) The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in ~~in the OHCA Behavioral Health Provider Manual~~OAC 317:30-5-95.25 through 317:30-5-95.31.

(e) Out of state placements must be approved by the agent designated by the OHCA and subsequently approved by the OHCA, Medical Services Behavioral Health Division. Requests for admission to Psychiatric Residential Treatment Facilities or acute care units will be reviewed for consideration of level of care, availability, suitability, and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under SoonerCare provisions as part of the per-diem rate. Out of state facilities are responsible for ~~insuring~~ensuring appropriate medical care as needed under SoonerCare provisions as part of the per-diem rate.

(f) Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. OHCA, or its designated agent, will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria ~~and following the current OHCA Behavioral Health Provider Manual~~as described in OAC 317:30-5-95.25 through OAC 317:30-5-95.31. The

approved length of stay applies to both hospital and physician services. The Child and Adolescent Level of Care Utilization System ~~(CALOCUS)~~(CALOCUS?) is a level of care assessment that will be used as a tool to determine the most appropriate level of care treatment for a member by LBHPs in the community.

317:30-5-95.25. Medical necessity criteria for acute psychiatric admissions for children

~~All acute psychiatric admissions for children must meet the medical necessity criteria for acute admission as identified in the OHCA Behavioral Health Provider Manual.~~Acute psychiatric admissions for children 13 or older must meet the terms and conditions contained in (1), (2), (3), (4) and two of the terms and conditions in (5)(A) to (6)(C) of this subsection. Acute psychiatric admissions for children 12 or younger must meet the terms or conditions contained in (1), (2), (3), (4) and one of (5)(A) to (5)(D), and one of (6)(A) to (6)(C) of this subsection.

(1) An Axis I primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-21 years of age may have an Axis II diagnosis of any personality disorder.

(2) Conditions are directly attributable to a psychiatric disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses). Adjustment or substance related disorder may be a secondary Axis I diagnosis.

(3) It has been determined by the OHCA designated agent that the current disabling symptoms could not have been managed or have not been manageable in a lesser intensive treatment program.

(4) Child must be medically stable.

(5) Within the past 48 hours, the behaviors present an imminent life threatening emergency such as evidenced by:

(A) Specifically described suicide attempts, suicide intent, or serious threat by the patient.

(B) Specifically described patterns of escalating incidents of self-mutilating behaviors.

(C) Specifically described episodes of unprovoked significant physical aggression and patterns of escalating physical aggression in intensity and duration.

(D) Specifically described episodes of incapacitating depression or psychosis that result in an inability to function or care for basic needs.

(6) Requires secure 24-hour nursing/medical supervision as evidenced by:

(A) Stabilization of acute psychiatric symptoms.

(B) Needs extensive treatment under physician direction.

(C) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.

317:30-5-95.26. Medical necessity criteria for continued stay - acute psychiatric admission for children

~~All acute psychiatric continued stay authorizations for children must meet the medical necessity criteria for acute admission as identified in the OHCA Behavioral Health Provider Manual.~~For continued stay acute psychiatric admissions for children must meet all of the conditions set forth in (1) to (4) of this subsection.

(1) An Axis I primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.

(2) Patient continues to manifest a severity of illness that requires an acute level of care as defined in the admission criteria and which could not be provided in a less restrictive setting.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, evidence of re-evaluation of treatment objectives and therapeutic interventions.

(3) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).

(4) Documented efforts of working with the child's family, legal guardians and/or custodians and other human service agencies toward a tentative discharge date.

317:30-5-95.27. Medical necessity criteria for admission - inpatient chemical dependency detoxification for children

~~All admissions for inpatient chemical dependency detoxification for children must meet the medical necessity criteria for a detoxification admission as identified in the OHCA Behavioral Health Provider Manual.~~

Inpatient chemical dependency detoxification admissions for children must meet the terms and conditions contained in (1), (2), (3), and one of (4)(A) through (D) of this subsection.

(1) Any psychoactive substance dependency disorder described in the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with detailed symptoms supporting the diagnosis and need for medical detoxification, except for cannabis, nicotine, or caffeine dependencies.

(2) Conditions are directly attributable to a substance dependency disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, or status offenses).

(3) It has been determined by the OHCA designated agent that the current disabling symptoms could not be

managed or have not been manageable in a lesser intensive treatment program.

(4) Requires secure 24-hour nursing/medical supervision as evidenced by:

(A) Need for active and aggressive pharmacological interventions.

(B) Need for stabilization of acute psychiatric symptoms.

(C) Need extensive treatment under physician direction.

(D) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.

317:30-5-95.28. Medical necessity criteria for continued stay - inpatient chemical dependency detoxification program for children

Authorization for admission to a chemical dependency detoxification program is limited to up to five days. Exceptions to this limit may be made up to ~~seven to~~ eight days based on a case-by-case review, per medical necessity criteria ~~as identified in the OHCA Behavioral Health Provider Manual~~as described in OAC 317:30-5-95.27.

317:30-5-95.29. Medical necessity criteria for admission - psychiatric residential treatment for children

~~All psychiatric residential treatment admissions for children must meet the medical necessity criteria for psychiatric residential treatment admission as identified in the OHCA Behavioral Health Provider Manual.~~Psychiatric Residential Treatment facility admissions for children must meet the terms and conditions in (1) to (4) and one of the (5)(A) through (5)(D), and one of (6)(A) through (6)(C) of this subsection.

(1) An Axis I primary diagnosis form the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior or status offenses).

(3) Patient has either received treatment in an acute care setting or it has been determined by the OHCA designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(4) Child must be medically stable.

(5) Patient demonstrates escalating pattern of self injurious or assaultive behaviors as evidenced by:

(A) Suicidal ideation and/or threat.

(B) History of or current self-injurious behavior.

(C) Serious threats or evidence of physical aggression.

(D) Current incapacitating psychosis or depression.

(6) Requires 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

317:30-5-95.30. Medical necessity criteria for continued stay - psychiatric residential treatment center for children

~~All psychiatric residential treatment continued stay authorizations for children must meet the medical necessity criteria for continued stay for psychiatric residential treatment admission as identified in the OHCA Behavioral Health Provider Manual.~~For continued stay Psychiatric Residential Treatment Facilities for children, admissions must meet the terms and conditions contained in (1), (2), (5), (6), and either (3) or (4) of this subsection.

(1) An Axis I primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM) with the exception of V codes, adjustment disorders, and substance abuse related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder.

(2) Conditions are directly attributed to a psychiatric disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses).

(3) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.

(A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) Patient has made gains toward social responsibility and independence.

(C) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.

(D) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.

(4) Child's condition has remained unchanged or worsened.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.

(5) There is documented continuing need for 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

(6) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.

317:30-5-95.31. ~~Pre-authorization~~Prior Authorization and extension procedures for children

(a) ~~Pre-admission~~Prior authorization for inpatient psychiatric services for children must be requested from the OHCA or its designated agent. The OHCA or its designated agent will evaluate and render a decision within 24 hours of receiving the request. A prior authorization will be issued by the OHCA or its designated agent, if the member meets medical necessity criteria. For the safety of SoonerCare members, additional approval from OHCA, or its designated agent is required for placement on specialty units or in special population programs or for members with special needs such as very low intellectual functioning.

(b) Extension requests (psychiatric) must be made through OHCA, or its designated agent. All requests are made prior to the expiration of the approved extension ~~following the guidelines in the OHCA Behavioral Health Provider Manual~~. Requests for the continued stay of a child who has been in an acute psychiatric program for a period of 15 days and in a psychiatric residential treatment facility for 3 months will require a review of all treatment documentation completed by the OHCA designated agent to determine the efficiency of treatment.

(c) Providers seeking prior authorization will follow OHCA's, or its designated agent's, prior authorization process guidelines for submitting behavioral health case management requests on behalf of the SoonerCare member.

(d) In the event a member disagrees with the decision by OHCA, or its designated agent, the member receives an evidentiary hearing under OAC 317:2-1-2(a). The member's request for such an appeal must commence within 20 calendar days of the initial decision.

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-240. Eligible providers

All outpatient behavioral health providers eligible for reimbursement under OAC 317:30-5-240 et seq. must be an accredited or Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) certified organization/agency in accordance with Section(s) 3-317, 3-323A, 3-306.1 and 3-415 of Title 43A of the Oklahoma Statutes and have a current contract on file with the Oklahoma Health Care Authority. Eligibility requirements for independent professionals (e.g., physicians and Licensed Behavioral Health Professionals), who provide outpatient behavioral health services and bill under their own national provider identification (NPI) number are covered under OAC 317:30-5-1 and OAC 317:30-5-275. Other outpatient ambulatory clinics (e.g. Federally Qualified Health Centers, Indian Health Clinics, school-based clinics) that offer outpatient behavioral health services are covered elsewhere in the agency rules.

317:30-5-240.1. Definitions

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

"Accrediting body" means one of the following:

(A) Accreditation Association for Ambulatory Health Care (AAAHC);

(B) American Osteopathic Association (AOA);

(C) Commission on Accreditation of Rehabilitation Facilities (CARF);

(D) Council on Accreditation of Services for Families and Children, Inc. (COA);

(E) The Joint Commission (TJC) formerly known as Joint Commission on Accreditation of Healthcare Organizations; or

(F) other OHCA approved accreditation.

"Adult" means an individual 21 and over, unless otherwise specified.

"AOD" means Alcohol and Other Drug.

"AODTP" means Alcohol and Other Drug Treatment Professional.

"BH" means behavioral health, which relates to mental, substance abuse, addictions, gambling, and other diagnosis and treatment.

"BHAs" means Behavioral Health Aides.

"BHRS" means Behavioral Health Rehabilitation Specialist.

"Certifying Agency" means the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS).

"Child" means an individual younger than 21, unless otherwise specified.

"CM" means case management.

"CMHC's" means Community Mental Health Centers who are state operated or privately contracted providers of behavioral health services for adults with severe mental illnesses, and youth with serious emotional disturbances.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.

"DSM" means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

"EBP" means an Evidence Based Practice per the Substance Abuse & Mental Health Services Administration (SAMHSA).

"FBCS" means Facility Based Crisis Stabilization.

"FSPs" means Family Support Providers.

"ICF/MR" means Intermediate Care Facility for the Mentally Retarded.

"Institution" means an inpatient hospital facility or Institution for Mental Disease (IMD).

"IMD" means Institution for Mental Disease as per 42 CFR 435.1009 as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. The regulations indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases. Title XIX of the Social Security Act provides that, except for individuals under age 21 receiving inpatient psychiatric care, Medicaid (Title XIX) does not cover services to IMD patients under 65 years of age [section 1905(a)(24)(B)].

"LBHP" means a Licensed Behavioral Health Professional.

"MST" means the EBP Multi-Systemic Therapy.

"OAC" means Oklahoma Administrative Code, the publication authorized by 75 O.S. 256 known as The Oklahoma Administrative Code, or, prior to its publication, the compilation of codified rules authorized by 75 O.S. 256(A)(1)(a) and maintained in the Office of Administrative Rules.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

"ODMHSAS" means the Oklahoma Department of Mental Health and Substance Abuse Services.

"ODMHSAS contracted facilities" means those providers that have a contract with the ODMHSAS to provide mental health or substance abuse treatment services, and also contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.

"OHCA" means the Oklahoma Health Care Authority.

"OJA" means the Office of Juvenile Affairs.

"Provider Manual" means the OHCA BH Provider Billing Manual.

"RBMS" means Residential Behavioral Management Services within a group home or therapeutic foster home.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.

"RSS" means Recovery Support Specialist.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"SED" means Severe Emotional Disturbance.

"SMI" means Severely Mentally Ill.

"Trauma informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

317:30-5-240.2. Provider participation standards

(a) **Accreditation and certification status.** Any agency may participate as an OPBH provider if the agency is qualified to render a covered service and meets the OHCA requirements for provider participation.

(1) Private, Community-based Organizations must be accredited as a provider of outpatient behavioral health services from one of the accrediting bodies and be an incorporated organization governed by a board of directors or be certified by the certifying agency in accordance with Section(s) 3-317, 3-323A, 3-306.1, or 3-415 of Title 43A of the Oklahoma Statutes;

(2) State-operated programs under the direction of ODMHSAS must be accredited by one of the accrediting bodies or be certified by the certifying agency in accordance with Section (s) 3-317, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statues;

(3) Freestanding Psychiatric Hospitals must be licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards and JCAHO accreditation;

(4) General Medical Surgical Hospitals must be appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA accreditation;

(5) Federally Qualified Health Centers/Community Health Centers facilities that qualify under OAC 317:30-5-660;

(6) Indian Health Services/Tribal Clinics/Urban Tribal Clinics facilities that qualify under Federal regulation;

(7) Rural Health Clinics facilities that qualify under OAC 317:30-5-355;

(8) Public Health Clinics and County Health Departments;

(9) Public School Systems.

(b) **Certifications.** In addition to the accreditation in paragraph (a) above or ODMHSAS certification in accordance with Section(s) 3-317-, 3-323A, 3-306.1 or 3-415 of Title 43A of the Oklahoma Statutes, provider specific credentials are required for the following:

(1) Substance Abuse agencies (OAC 450:18-1-1);

(2) ~~Evidenced~~Evidence Based Best Practices but not limited to:

(A) Assertive Community Treatment (OAC 450:55-1-1);

(B) Multi-Systemic Therapy (Office of Juvenile Affairs); and

(C) Peer Support/Community Recovery Support;

(3) Systems of Care (OAC 340:75-16-46);

(4) Mobile and Facility-based Crisis Intervention (OAC 450:23-1-1);

(5) Case Management (OAC 450:50-1-1);

(6) RBMS in group homes (OAC 377:10-7) or foster care settings (OAC 340:75-8-4);

(7) Day Treatment - CARF, JCAHO, ~~and~~or COA will be required as of December 31, 2009; and

(8) Partial Hospitalization/Intensive Outpatient CARF, JCAHO, ~~and~~or COA will be required as of December 31, 2009.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, COA or AOA accreditation or ODMHSAS certification in accordance with Section(s) 3-317, 3-323A, 3-306.1 or 3-415 or Title 43A of the Oklahoma Statutes will supply the documentation from the accrediting body or certifying agency, along with other information as required for contracting purposes to the OHCA. The contract must

include copies of all required state licenses, accreditation and certifications.

(2) If the contract is approved, a separate provider identification number for each outpatient behavioral health service site will be assigned. Each site operated by an outpatient behavioral health facility must have a separate provider contract and site-specific accreditation and/or certification as applicable. A site is defined as an office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the member's residence, a school, or when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(3) Effective 07/01/10, all behavioral health providers are required to have an individual contract with OHCA in order to receive SoonerCare reimbursement. This requirement includes outpatient behavioral health agencies and all individual rendering providers who work within an agency setting. Individual contracting requirements are set forth in ~~the OHCA BH Provider Manual~~OAC 317:30-3-2 and OAC 317:30-5-280.

(d) **Standards and criteria.** Eligible organizations must meet each of the following:

(1) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.

(2) Have a multi-disciplinary, professional team. This team must include all of the following:

(A) One of the LBHPs;

(B) A BHRS, if individual or group rehabilitative services for behavioral health disorders are provided;

(C) An AODTP, if treatment of alcohol and other drug disorders is provided;

(D) A registered nurse or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and Support ~~service~~ Service is provided;

(E) The member for whom the services will be provided, and parent/guardian for those under 18 years of age.

(F) A member treatment advocate if desired and signed off on by the member.

(3) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241 et seq., as applicable to their program. Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services.

(A) Assessments and Treatment Plans;

(B) Psychotherapies;

(C) Behavioral Health Rehabilitation services;

(D) Crisis Intervention services;

(E) Support Services; and

(F) Day Treatment/Intensive Outpatient.

(4) Be available 24 hours a day, seven days a week, for Crisis Intervention services.

(5) Provide or have a plan for referral to physician and other behavioral health services necessary for the treatment of the behavioral disorders of the population served.

(6) Comply with all applicable Federal and State Regulations.

(7) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.

(8) Demonstrate the ability to keep appropriate records and documentation of services performed.

(9) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(10) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

317:30-5-241. Covered Services

(a) Outpatient behavioral health services are covered for adults and children as set forth in this Section ~~and following the requirements as defined in the OHCA BH Provider Manual,~~ unless specified otherwise, and when provided in accordance with a documented individualized service plan, developed to treat the identified behavioral health and/or substance abuse disorder(s).

(b) All services are to be for the goal of improvement of functioning, independence, or well-being of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

~~(c) All outpatient BH services will require authorization through OHCA, or its designated agent, following established medical necessity criteria. Providers are required to follow these criteria and guidelines under the OHCA BH Provider Manual. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.~~

~~(d) Unauthorized services will not be SoonerCare compensable, unless designated by OHCA.~~

(c) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Behavioral Health Provider Manual.

(d) All outpatient BH services must be provided following established medical necessity criteria. Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process

for obtaining them, refer to the Behavioral Health Provider Manual. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

317:30-5-241.1. Screening, assessment and service plan

All providers must comply with the requirements as set forth in ~~the OHCA BH Provider Manual~~this Section.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population.** This service is compensable only on behalf of a member who is under a PACT program.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current bio-psycho-social information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report, diagnosis and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP. CADCs are permitted to provide Drug and Alcohol assessments through June 30, 2010. Effective July 1, 2010 all assessments must be provided by LBHPs.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.

(D) **Target population and limitations.** This service is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(E) **Documentation requirements.** The assessment must include all elements and tools required by the OHCA. In the case of children under the age of 18, it is performed with the direct, active face-to-face participation of the parent or guardian. The child's level of participation is based on age, developmental and clinical appropriateness. The assessment must include a DSM multi-axial diagnosis completed for all five axes from the most recent DSM edition. The assessment must contain but is not limited to the following:

(i) Date, to include month, day and year of the assessment session(s);

(ii) Source of information;

(iii) Member's first name, middle initial and last name;

(iv) Gender;

(v) Birth Date;

(vi) Home address;

(vii) Telephone number;

(viii) Referral source;

(ix) Reason for referral;

(x) Person to be notified in case of emergency;

(xi) Presenting reason for seeking services;

(xii) Start and stop time for each unit billed;

(xiii) Signature of parent of guardian participating in face-to-face assessment. Signature required for members over the age of 14;

(xiv) Bio-Psychosocial information which must include:

(I) Identification of the member's strengths, needs, abilities and preferences;

(II) History of the presenting problem;

(III) Previous psychiatric treatment history, include treatment for psychiatric; substance abuse; drug and alcohol addiction; and other addictions;

(IV) Health history and current biomedical conditions and complications;

(V) Alcohol, Drug, and/or other addictions history;

(VI) Trauma, abuse, neglect, violence, and/or sexual assault history of self and/or others, include Department of Human Services involvement;

(VII) Family and social history, include MH, SA, Addictions, Trauma/Abuse/Neglect;

(VIII) Educational attainment, difficulties and history;

(IX) Cultural and religious orientation;

(X) Vocational, occupational and military history;

(XI) Sexual history, including HIV, AIDS, and STD at-risk behaviors;

(XII) Marital or significant other relationship history;

(XIII) Recreation and leisure history;

(XIV) Legal or criminal record, including the identification of key contacts, (i.e. attorneys, probation officers, etc.);

(XV) Present living arrangements;

(XVI) Economic resources;

(XVII) Current support system including peer and other recovery supports.

(xv) Mental status and Level of Functioning information, including questions regarding:

(I) Physical presentation, such as general appearance, motor activity, attention and alertness, etc.;

(II) Affective process, such as mood, affect, manner and attitude, etc.;

(III) Cognitive process, such as intellectual ability, social-adaptive behavior, thought processes, thought content, and memory, etc; and

(IV) Full Five Axes DSM diagnosis.

(xvi) Pharmaceutical information to include the following for both current and past medications;

(I) Name of medication;

(II) Strength and dosage of medication;

(III) Length of time on the medication; and

(IV) Benefit(s) and side effects of medication.

(xvii) LBHP's interpretation of findings and diagnosis;

(xviii) Signature and credentials of LBHP who performed the face-to-face behavioral assessment;

(xix) Client Data Core Elements reported into designated OHCA representative.

(F) **Service Plan Development, Low Complexity.** A Service Plan Development, Low Complexity is required every 6 months and must include an update to the bio-psychosocial assessment and re-evaluation of diagnosis.

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the ~~member's~~member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. BH Service Plan Development is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training.

(B) **Qualified professional.** This service is performed by an LBHP.

(C) **Time requirements.** Service Plan updates must be conducted face-to-face and are required every six months during active treatment. Updates can be conducted whenever it is clinically needed as determined by the ~~provider~~LBHP and member.

(D) **Documentation requirements.** Comprehensive and integrated service plan content must address the following:

(i) member strengths, needs, abilities, and preferences(SNAP);

(ii) identified presenting challenges, problems, needs and diagnosis;

(iii) specific goals for the member;

(iv) objectives that are specific, attainable, realistic, and time-limited;

(v) each type of service and estimated frequency to be received;

(vi) the practitioner(s) name and credentials that will be providing and responsible for each service;

(vii) any needed referrals for service;

(viii) specific discharge criteria;

(ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;

(x) service plans are not valid until all signatures are present (signatures are required from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP; and

(xi) all changes in service plan must be documented in a service plan update (low complexity) or within the service plan until time for the update (low complexity).

(xii) Updates to goals, objectives, service provider, services, and service frequency, must be documented within the service plan until the six month review/update is due.

(xiii) Service plan updates must address the following:

(I) update to the bio-psychosocial assessment, re-evaluation of diagnosis service plan goals and/ or objectives;

(II) progress, or lack of, on previous service plan goals and/or objectives;

(III) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;

(IV) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;

(V) change in frequency and/or type of services provided;

(VI) change in practitioner(s) who will be responsible for providing services on the plan;

(VII) change in discharge criteria;

(VIII) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date; and

(IX) service plans are not valid until all signatures are present. The required signatures are: from the member (if 14 or over), the parent/guardian (if younger than 18 or otherwise applicable), and the primary LBHP.

(E) **Service limitations:**

(i) Behavioral Health Service Plan Development, Moderate complexity (i.e., pre-admission procedure code group) are limited to 1 per member, per provider, unless more than a year has passed between services, then another one can be requested and may be authorized by OHCA or its designated agent.

(ii) Behavioral Health Service Plan Development, Low Complexity: Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member. The date of service is when the treatment plan is complete and the date the last required signature is obtained. Services should always be age, developmentally, and clinically appropriate.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified professionals.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Each qualified professional must have a current contract with the Oklahoma Health Care Authority.

(C) **Documentation requirements.** All psychological services must be reflected by documentation in the member's record. All assessment, testing, and treatment services/units billed must include the following:

(i) date;

(ii) start and stop time for each session/unit billed and physical location where service was provided;

(iii) signature of the provider;

(iv) credentials of provider;

(v) specific problem(s), goals and/or objectives addressed;

(vi) methods used to address problem(s), goals and objectives;

(vii) progress made toward goals and objectives

(viii) patient response to the session or intervention; and

(ix) any new problem(s), goals and/or objectives identified during the session.

(D) **Service Limitations.** Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Evaluation and testing is clinically appropriate and allowable when an accurate diagnosis and determination of treatment needs is needed. Eight hours/units of testing per patient over the age of two, per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting are performed. A maximum of 12 hours of therapy and testing, per day per rendering provider are allowed. A child who is being treated in an acute inpatient setting can receive separate psychological services by a physician or psychologist as the inpatient per diem is for "non-physician" services only. A child receiving Residential level treatment in either an therapeutic foster care home, or group home may not receive additional individual, group or family counseling or psychological testing unless allowed by the OHCA or its designated agent. Psychologists employed in State and Federal Agencies, who are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. For assessment conducted in a school setting the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Individuals who qualify for Part B of Medicare: Payment is made utilizing the SoonerCare allowable for comparable services. Payment is made to physicians, LBHPs or psychologists with a license to practice in the state where the services is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed.

317:30-5-241.2. Psychotherapy

(a) **Individual/Interactive Psychotherapy.**

(1) **Definition.** Individual Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change.

(2) **Definition.** Interactive Psychotherapy is individual psychotherapy that involves the use of play therapy equipment, physical aids/devices, language interpreter, or other mechanisms of nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the member who has not yet developed or who has lost the expressive language communication skills to explain his/her symptoms and response to treatment, requires the use of a mechanical device in order to progress in treatment, or the receptive communication skills to understand the clinician. The service may be used for adults who are hearing impaired and require the use of language interpreter.

(3) **Qualified professionals.** With the exception of a qualified interpreter if needed, only the member and the Licensed Behavioral Health Professional (LBHP) ~~or Certified Alcohol and Drug Counselor (CADC), for substance abuse (SA) only,~~ should be present and the setting must protect and assure confidentiality. Certified Alcohol and Drug Counselors (CADC) are permitted to provide Individual/Interactive Psychotherapy for substance abuse (SA) only through June 30, 2013. Effective July 1, 2013 all Individual/Interactive Psychotherapy must be provided by LBHPs. Ongoing assessment of the member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the member's developmental and cognitive abilities. Individual/Interactive counseling must be provided by a LBHP ~~or CADC when treatment is for an alcohol or other drug disorder only~~. CADCs are permitted to provide Individual/Interactive counseling for an alcohol or other drug disorders only through June 30, 2013.

(4) **Limitations.** A maximum of 6 units per day per member is compensable.

(b) **Group Psychotherapy.**

(1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the interaction between the LBHP ~~or the CADC when treating alcohol and other drug disorders only,~~ and two or more individuals to promote positive emotional or behavioral change. CADCs are permitted to provide group psychotherapy when treating alcohol and other drug disorders only through June 30, 2013; effective July 1, 2013 all group psychotherapy must be provided by LBHPs. The focus of the group must be directly related to the goals and objectives in the individual member's current service plan. This service does not include social or daily living skills development as described under Behavioral Health Rehabilitation Services.

(2) **Group sizes.** Group Psychotherapy is limited to a total of eight adult (18 and over) individuals except when the individuals are residents of an ICF/MR where the maximum group size is six. For all children under the age of 18, the total group size is limited to six.

(3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight families/units. Billing is allowed once per family unit, though units may be divided amongst family members.

(4) **Qualified professionals.** Group psychotherapy will be provided by a LBHP ~~or CADC when treatment is for an alcohol or other drug disorder only~~. CADCs are permitted to provide group psychotherapy when treating alcohol and other drug disorders only through June 30, 2013. Effective July 1, 2013 all group psychotherapy must be provided by LBHPs. Group Psychotherapy must take place in a confidential setting limited to the LBHP or CADC conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants.

(5) **Limitations.** A maximum of 12 units per day per member is compensable.

(c) **Family Psychotherapy.**

(1) **Definition.** Family Psychotherapy is a face-to-face psychotherapeutic interaction between a LBHP ~~or CADC~~ and the member's family, guardian, and/or support system. CADCs are permitted to provide family psychotherapy through June 30, 2013; effective July 1, 2013 all family psychotherapies must be provided by LBHPs. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the Evidence Based Practice titled Family Psychoeducation.

(2) **Qualified professionals.** Family Psychotherapy must be provided by a LBHP ~~or CADC when treatment is for an alcohol or other drug disorder only~~.

(3) **Limitations.** A maximum of 12 units per day per member/family unit is compensable. The provider may not bill any time associated with note taking and/or medical record upkeep. The provider may only bill the time spent in direct face-to-face contact. Provider must comply with documentation requirements listed in OAC 317:30-5-248.

(d) **Multi-Systemic Therapy (MST).**

(1) **Definition.** MST intensive outpatient program services are limited to children within an Office of Juvenile Affairs (OJA) MST treatment program which provides an intensive, family and community-based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, antisocial, and/or substance abusing behaviors, and are at risk for out of home placement. Case loads are kept low due to the intensity of the services provided.

(2) **Qualified professionals.** Masters level professionals who work with a team that may include bachelor level staff.

(3) **Documentation requirements.** Providers must comply with documentation requirements in 317:30-5-248.

(4) **Service limitations.** Partial billing is not allowed, when only one service is provided in a day, providers

should not bill for services performed for less than 8 minutes.

(e) **Children/Adolescent Partial Hospitalization Program (PHP).**

(1) **Definition.** Partial hospitalization services are services that (1) Are reasonable and necessary for the diagnosis or active treatment of the member's condition; (2) Are reasonably expected to improve ~~or maintain~~ the member's condition and functional level and to prevent relapse or hospitalization and (3) ~~Are provided in accordance with services outlined in 42 CFR 410.43.~~Include the following:

(A) Assessment, diagnostic and treatment plan services for mental illness and/or substance abuse disorders provided by LBHPs.

(B) Individual/Group/Family (primary purpose is treatment of the member's condition) psychotherapies provided by LBHPs.

(C) Substance abuse specific services are provided by LBHPs qualified to provide these services.

(D) Drugs and biologicals furnished for therapeutic purposes.

(E) Family counseling, the primary purpose of which is treatment of the member's condition.

(F) Behavioral health rehabilitation training and education services to the extent the training and educational activities are closely and clearly related to the member's care and treatment, provided by a Behavioral Health Rehabilitation Specialist (BHRS), Certified Alcohol and Drug Counselor (CADC)or LBHP who meets the professional requirements listed in 317:30-5-240.3.

(G) Care Coordination of behavioral health services provided by certified case managers.

(2) **Qualified professionals.** ~~All services in the PHP are provided by a team, which must be composed of one or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP), a case manager, or other certified Behavioral Health/Substance Abuse paraprofessional staff. Refer to OHCA BH Provider Manual for further requirements. The treatment plan is directed under the supervision of a physician.~~

(A) All services in the PHP are provided by a clinical team, consisting of the following required professionals:

(i) A licensed physician;

(ii) Registered nurse; and

(iii) One or more of the licensed behavioral health professionals (LBHP) listed in 30-5-240.3(a).

(B) The clinical team may also include any of the following paraprofessionals:

(i) Masters or bachelors level Behavioral Health Rehabilitation Specialist;

(ii) Certified Case Manager; or

(iii) Certified Alcohol and Drug Counselor (CADC).

(C) The treatment plan is directed under the supervision of a physician and the number of professionals and paraprofessionals required on the clinical team is dependent on the size of the program.

(3) **Qualified providers.** Provider agencies for PHP must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA) for partial hospitalization and enrolled in SoonerCare. Staff providing these services are employees or contractors of the enrolled agency.

(4) **Limitations.** Services are limited to children 0-20 only. Services must be offered at a minimum of 3 hours per day, 5 days per week. Therapeutic services are limited to 4 billable hours per day ~~and must be prior authorized~~. PHP services are all inclusive with the exception of physician services and drugs that cannot be self-administered, those services are separately billable. ~~Refer to OHCA BH Provider Billing Manual for further definition.~~Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning. Occupational, Physical and Speech therapy will be provided by the Independent School District (ISD).

~~(5) **Reporting.** Reporting requirements must be followed as outlined in the OHCA BH Provider Billing Manual~~

(5) **Service requirements.**

(A) Therapeutic Services are to include the following:

(i) Psychiatrist/physician face-to-face visit 2 times per month;

(ii) Crisis management services available 24 hours a day, 7 days a week;

(B) Psychotherapies to be provided a minimum of four (4) hours per week and include the following:

(i) Individual therapy - a minimum of 1 session per week;

(ii) Family therapy - a minimum of 1 session per week; and

(iii) Group therapy - a minimum of 2 sessions per week;

(C) Interchangeable therapies which include the following:

(i) Case Management (face-to-face);

(ii) BHRS/ alcohol and other drug abuse education;

(iii) Medication Training and Support; and

(iv) Expressive therapy.

(6) **Documentation requirements.** Documentation needs to specify active involvement of the member's family, caretakers, or significant others involved in the individual's treatment. A nursing health assessment must be completed within 24 hours of admission. A physical examination and medical history must be coordinated with the Primary Care Physician. Service plan updates are required every three (3) months or more frequently based on clinical need. Records must be documented according to Section OAC 317:30-5-248.

(7) **Staffing requirements.** Staffing requirements must consist of the following:

(A) RN trained and competent in the delivery of behavioral health services as evidenced by education and/or experience that is available onsite during program hours to provide necessary nursing care and/or psychiatric nursing care (1 RN at a minimum can be backed up by an LPN but an RN must always be onsite). Nursing staff administers medications, follows up with families on medication compliance, and restraint assessments.

(B) Medical director must be a licensed psychiatrist.

(C) A psychiatrist/physician must be available 24 hours a day, 7 days a week.

(f) **Children/Adolescent Day Treatment Program.**

(1) **Definition.** Day Treatment Programs are for the stabilization of children and adolescents with severe emotional and/or behavioral disturbances. Treatment is designed for children who have difficulty functioning in mainstream community settings such as classrooms, and who need a higher intensity of services than outpatient counseling provides. Treatment is time limited and includes therapeutically intensive clinical services geared towards reintegration to the home, school, and community.

(2) **Qualified professionals.** All services in Day Treatment are provided by a team, which must be composed of one or more of the following participants: physician, registered nurse, licensed behavioral health professional (LBHP), a case manager, or other certified Behavioral Health/Substance Abuse paraprofessional staff. ~~Refer to OHCA BH Provider Billing Manual for further requirements.~~ Services are directed by an LBHP.

(3) **Qualified providers.** Provider agencies for Day Treatment must be accredited by one of the national accrediting bodies; The Joint Commission (TJC), Commission on Accreditation of Rehabilitation Facilities (CARF) or The Council on Accreditation (COA).

(4) **Limitations.** Services must be offered at a minimum of 4 days per week at least 3 hours per day. ~~Refer to OHCA BH Provider Billing Manual for further requirements.~~Group size is limited to a maximum of 8 individuals as clinically appropriate given diagnostic and developmental functioning.

(5) **Service requirements.** On-call crisis intervention services must be available 24 hours a day, 7 days a week (When members served have psychiatric needs, psychiatric services are available which include the availability of a psychiatrist 24 hours a day, 7 days a week. A psychiatrist can be available either on site or on call but must be available at all times). Day treatment program will provide assessment and diagnostic services and/or medication monitoring, when necessary.

(A) Treatment activities are to include the following every week:

(i) Family therapy at least one hour per week (additional hours of FT may be substituted for other day treatment services;

(ii) Group therapy at least two hours per week; and

(iii) Individual therapy at least one hour per week.

(B) Additional services are to include at least one of the following services per day:

(i) Medication training and support (nursing) once monthly if on medications;

(ii) BHRS to include alcohol and other drug education if clinically necessary and appropriate

(iii) Case management as needed and part of weekly hours for member;

(iv) Occupational therapy as needed and part of weekly hours for member; and

(v) Expressive therapy as needed and part of weekly hours for the member.

(6) **Documentation requirements.** Service plans are required every three (3) months.

317:30-5-241.3. Behavioral Health Rehabilitation (BHR) services

(a) **Definition.** BHR are behavioral health rehabilitation services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may include the Evidence Based Practice of Illness, Management, and Recovery.

(1) **Clinical restrictions.** This service is generally performed with only the members and the BHRS, but may include a member and the member's family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum.

(2) **Qualified providers.** A BHRS, CADC, or LBHP may perform BHR, following a treatment curriculum approved by a LBHP. Staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE or trauma informed methodology.

(3) **Group sizes.** The minimum staffing ratio is fourteen members for each BHRS, CADC, or LBHP for adults and eight to one for children under the age of eighteen.

(4) **Limitations.**

(A) **Transportation.** Travel time to and from BHR treatment is not compensable. Group psychosocial rehabilitation services do not qualify for the OHCA transportation program, but they will arrange for transportation for those who require specialized transportation equipment. A member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(B) **Time.** Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time.

(C) **Location.** In order to develop and improve the member's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the outpatient behavioral health agency site. When this occurs, the BHRS, CADC, or LBHP must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

(D) **Billing.** Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic foster home are not eligible for this service, unless ~~prior approved~~allowed by OHCA or its designated agent.

(i) **Group.** The maximum is 24 units per day for adults and 16 units per day for children.

(ii) **Individual.** The maximum is six units per day. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

(E) **Documentation requirements.** Progress notes for intensive outpatient mental health, substance abuse or integrated programs may be in the form of daily summary or weekly summary notes and must include the following:

(i) Curriculum sessions attended each day and/or dates attending during the week;

(ii) Start and stop times for each day attended and the physical location in which the service was rendered;

(iii) Specific goal(s) and objectives addressed during the week;

(iv) Type of Skills Training provided each day and/or during the week including the specific curriculum used with member;

(v) Member satisfaction with staff intervention(s);

(vi) Progress, or barrier to, made towards goals, objectives;

(vii) New goal(s) or objective(s) identified;

(viii) Signature of the lead BHRS; and

(ix) Credentials of the lead BHRS.

(b) **Medication training and support.**

(1) **Definition.** Medication Training and Support is a documented review and educational session by a registered nurse, or physician assistant focusing on a member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the medical or clinical record. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization.

(2) **Limitations.**

(A) Medication Training and Support may not be billed for SoonerCare members who reside in ICF/MR facilities.

(B) One unit is allowed per month per patient ~~without prior authorization~~.

(C) Medication Training & Support is not allowed to be billed on the same day as pharmacological management.

(3) **Qualified professionals.** Must be provided by a licensed registered nurse, or a physician assistant as a direct service under the supervision of a physician.

(4) **Documentation requirements** - Medication Training and Support documented review must focus on:

(A) a member's response to medication;

(B) compliance with the medication regimen;

(C) medication benefits and side effects;

(D) vital signs, which include pulse, blood pressure and respiration; and

(E) documented within the progress notes/medication record.

317:30-5-241.4. Crisis Intervention

(a) **Onsite and Mobile Crisis Intervention Services (CIS).**

(1) **Definition.** Crisis Intervention Services are face-to-face services for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or danger of AOD relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented.

(2) **Limitations.** Crisis Intervention Services are not compensable for SoonerCare members who reside in ICF/MR facilities, or who receive RBMS in a group home or Therapeutic Foster Home. CIS is also not compensable for members who experience acute behavioral or emotional dysfunction while in attendance for other behavioral health services, unless there is a documented attempt of placement in a higher level of care. The maximum is eight units per month; established mobile crisis response teams can bill a maximum of sixteen units per month, and 40 units each 12 months per member.

(3) **Qualified professionals.** Services must be provided by a LBHP.

(b) **Facility Based Crisis Stabilization (FBCS).** FBCS services are emergency psychiatric and substance abuse services aimed at resolving crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment.

(1) **Qualified professionals.** FBCS services are provided under the supervision of a physician aided by a licensed nurse, and also include LBHPs for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the ODMHSAS to provide this service within the overall behavioral health service delivery system.

(2) **Limitations.** The unit of service is per hour. Providers of this service must meet the requirements delineated in the OAC 450:23. Documentation of records must comply with OAC 317:30-5-248.

317:30-5-241.5. Support services

(a) **Program of Assertive Community Treatment (PACT) Services.**

(1) **Definition.** PACT is provided by an interdisciplinary team that ensures service availability 24 hours a day, seven days a week and is prepared to carry out a full range of treatment functions wherever and whenever needed. An individual is referred to the PACT team service when it has been determined that his/her needs are so pervasive and/or unpredictable that it is unlikely that they can be met effectively by other combinations of available community services, or in circumstances where other levels of outpatient care have not been successful to sustain stability in the community.

(2) **Target population.** Individuals 18 years of age or older with serious and persistent mental illness and co-occurring disorders. PACT services are those services delivered within an assertive community-based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self-contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for persons most clearly in need of intensive ongoing services.

(3) **Qualified professionals.** Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and certified by the ODMHSAS in accordance with 43A O.S. 319 and OAC 450:55. The team leader must be an LBHP.

(4) **Limitations.** A maximum of 105 hours per member per year in the aggregate. All PACT compensable SoonerCare services are required to be face-to-face. SoonerCare members who are enrolled in this service may not receive other outpatient behavioral health services except for FBCS and CM.

(5) **Service requirements.** PACT services must include the following:

(A) PACT assessments (initial and comprehensive);

(i) **Initial assessment** - is the initial evaluation of the member based upon available information, including self-reports, reports of family members and other significant parties, and written summaries from other agencies, including police, court, and outpatient and inpatient facilities, where applicable, culminating in a comprehensive initial assessment. Member assessment information for admitted members shall be completed on the day of admission to the PACT. The start and stop times for this service should be recorded in the chart.

(ii) **Comprehensive assessment** - is the organized process of gathering and analyzing current and past information with each member and the family and/or support system and other significant people to evaluate: 1) mental and functional status; 2) effectiveness of past treatment; 3) current treatment, rehabilitation and support needs to achieve individual goals and support recovery; and 4) the range of individual strengths (e.g., knowledge gained from dealing with adversity or personal/professional roles, talents, personal traits) that can act as resources to the member and his/her recovery planning team in pursuing goals. Providers must bill only the face-to-face service time with the member. Non-face to face time is not compensable. The start and stop times for this service should be recorded in the chart.

(B) Behavioral health service plan (moderate and low complexity by a non-physician (treatment planning and review) is a process by which the information obtained in the comprehensive assessment, course of treatment, the member, and/or treatment team meetings is evaluated and used to develop a service plan that has individualized goals, objectives, activities and services that will enable a member to improve. The initial assessment serves as a guide until the comprehensive assessment is completed. It is to focus on recovery and must include a discharge plan. It is performed with the direct active participation by the member. SoonerCare compensation for this service includes only the face to face time with the member. The start and stop times for this service should be recorded in the chart.

(C) Treatment team meetings (team conferences with the member present is a billable service. This service is conducted by the treatment team, which includes the member and all involved practitioners. For a complete description of this service, see OAC 450:55-5-6 Treatment Team Meetings. This service can be billed to SoonerCare only when the member is present and participating in the treatment team meeting. The conference starts at the beginning of the review of an individual member and ends at the conclusion of the review. Time related to record keeping and report generation is not reported. The start and stop should be recorded in the member's chart. The participating psychiatrist/physician should bill the appropriate CPT code; and the agency is allowed to bill one treatment team meeting per member as medically necessary.

(D) Individual and family psychotherapy;

(E) Individual rehabilitation;

(F) Recovery support services;

(G) Group rehabilitation;

(H) Group psychotherapy;

(I) Crisis Intervention;

(J) Medication training and support services;

(K) Blood draws and /or other lab sample collection services performed by the nurse.

(b) **Behavioral Health Aide Services.**

(1) **Definition.** Behavioral Health Aides provide behavior management and redirection and behavioral and life skills remedial training. The behavioral health aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(2) **Target population.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program, or are under OKDHS or OJA custody residing within a RBMS level of care, who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes.

(3) **Qualified professionals.** Behavioral Health Aides must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The Behavioral Health Aide cannot bill for more than one individual during the same time period.

(5) **Documentation requirements.** Providers must follow requirements listed in OAC 317:30-5-248.

(c) **Family Support and Training.**

(1) **Definition.** This service provides the training and support necessary to ensure engagement and active participation of the family in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. Child Training is provided to family members to increase their ability to provide a safe and supportive environment in the home and community for the child. Parent Support ensures the engagement and active participation of the family in the treatment planning process and guides families toward taking a proactive role in their child's treatment. Parent Training is assisting the family with the acquisition of the skills and knowledge necessary to facilitate an awareness of their child's needs and the development and enhancement of the family's specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management.

(2) **Target population.** Family Support and Training is designed to benefit the SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody, are residing within a RBMS level of care or are at risk for out of home placement, and who without these services would require psychiatric hospitalization.

(3) **Qualified professionals.** Family Support Providers (FSP) must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The FSP cannot bill for more than one individual during the same time period.

(5) **Documentation requirements.** Providers must comply with requirements listed in OAC 317:30-5-248.

(d) **Community Recovery Support (CRS).**

(1) **Definition.** CRS (or Peer Recovery Support) services are an EBP model of care which consists of a qualified recovery support specialist provider (RSS) who assists individuals with their recovery from behavioral health disorders. Recovery Support is a service delivery role in the ODMHSAS public and contracted provider system throughout the behavioral health care system where the provider understands what creates recovery and how to support environments conducive of recovery. The role is not interchangeable with traditional staff members who usually work from the perspective of their training and/or their status as a licensed behavioral health provider; rather, this provider works from the perspective of their experimental expertise and specialized credential training. They lend unique insight into mental illness and what makes recovery possible because they are in recovery.

(2) **Target population.** Adults 18 and over with SMI and/or AOD disorder(s).

(3) **Qualified professionals.** Recovery Support Specialists (RSS) must be trained/credentialed through ODMHSAS.

(4) **Limitations.** The RSS cannot bill for more than one individual during the same time period. This service can be an individual or group service. Groups have no restriction on size.

(5) **Documentation requirements.** Providers must comply with requirements listed in OAC 317:30-5-248.

(6) **Service requirements.**

(A) CRS/RSS staff utilizing their knowledge, skills and abilities will:

(i) teach and mentor the value of every individual's recovery experience;

(ii) model effective coping techniques and self-help strategies;

(iii) assist members in articulating personal goals for recovery; and

(iv) assist members in determining the objectives needed to reach his/her recovery goals.

(B) CRS/RSS staff utilizing ongoing training must:

(i) proactively engage members and possess communication skills/ability to transfer new concepts, ideas, and insight to others;

(ii) facilitate peer support groups;

(iii)assist in setting up and sustaining self-help (mutual support) groups;

(iv) support members in using a Wellness Recovery Action Plan (WRAP);

(v) assist in creating a crisis plan/Psychiatric Advanced Directive;

(vi) utilize and teach problem solving techniques with members;

(vii) teach members how to identify and combat negative self-talk and fears;

(viii) support the vocational choices of members and assist him/her in overcoming job-related anxiety;

(ix) assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(x) assist other staff in identifying program and service environments that are conducive to recovery; and

(xi) attend treatment team and program development meetings to ensure the presence of the member's voice and to promote the use of self-directed recovery tools.

PART 25. PSYCHOLOGISTS

317:30-5-276. Coverage by category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered for children as set forth in this Section ~~and following the requirements as defined in the OHCA BH Provider Manual~~, unless specified otherwise, and when provided in accordance with a documented individualized service plan medical record, developed to treat the identified behavioral health and/or substance abuse disorder(s).

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

~~(2) All outpatient BH services will require authorization through OHCA, or its designated agent, following established medical necessity criteria. Providers are required to follow these criteria and guidelines under the OHCA BH Provider Manual. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.~~

~~(3) Unauthorized services will not be SoonerCare compensable, unless designated by OHCA.~~

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Behavioral Health Provider Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Behavioral Health Provider Manual. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** There is no coverage for adults for services by a psychologist.

(c) **Children.** Coverage for children includes the following services ~~(all services, except Initial or Level of Care Assessment, health and behavior codes and/or Crisis Intervention services, require authorization by OHCA, or its designated agent)~~:

(1) Bio-Psycho-Social Assessments. Psychiatric Diagnostic Interview Examination (PDIE) initial assessment or Level of Care Assessment. The interview and assessment is defined as a face-to-face interaction with the member. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider per member. If there has been a break in service over a six month period, then an additional unit of PDIE can be prior authorized by OHCA, or their designated agent.

(2) Individual and/or Interactive psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a SoonerCare eligible child as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six patients for children four years of age up to the age of 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of a SoonerCare eligible child four years of age or older as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by a psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment

test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of two), per provider is allowed ~~with authorization~~ every 12 months. ~~In circumstances where it is determined that further testing is medically necessary, and or needed for specialty testing, additional hours/units may be prior authorized by the OHCA or designated agent based upon medical necessity and consultation review.~~There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Test results must be reflected in the service plan or medical record. The service must clearly document the need for the testing and what the testing is expected to achieve. ~~Any testing performed for a child under three must be prior authorized.~~Testing for a child younger than three must be medically necessary and meet established criteria as set forth in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Health and Behavior codes - behavioral health services are available only to chronically and severely medically ill children.

(7) Crisis intervention services for the purpose of stabilization and hospital diversion as clinically appropriate.

(8) Payment for therapy services provided by a psychologist to any one member is limited to eight sessions/units per month. ~~All units/sessions, except the Initial or Level of Care Assessments or Crisis Intervention must be authorized by the OHCA or its designated agent.~~ A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(9) A child who is being treated in an acute psychiatric inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only.

(10) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing ~~without prior authorization~~unless allowed by the OHCA or its designated agent.

(d) **Home and Community Based Waiver Services for the ~~Mentally Retarded~~Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the ~~mentally retarded~~intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

317:30-5-281. Coverage by Category

(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered for children as set forth in this Section ~~and following the requirements as defined in the OHCA BH Provider Manual~~, unless specified otherwise, and when provided in accordance with a documented individualized service plan and/or medical record, developed to treat the identified behavioral health and/or substance abuse disorder(s).

(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

~~(2) All outpatient BH services will require authorization through OHCA, or its designated agent, following established medical necessity criteria. Providers are required to follow these criteria and guidelines under the OHCA BH Provider Manual. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.~~

~~(3) Unauthorized services will not be SoonerCare compensable, unless designated by OHCA.~~

(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Behavioral Health Provider Manual.

(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Behavioral Health Provider Manual. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.

(b) **Adults.** There is no coverage for adults for services by a LBHP.

(c) **Children.** Coverage for children includes the following services ~~(all services, except for the Initial or Level of Care Assessments or Crisis Intervention, require authorization by OHCA or its designated agent, providers listed in~~

~~317:30-5-280(a)(1),(a)(3)and (a)(4) are exempt from authorization)~~:

(1) Bio-Psycho-Social and Level of Care Assessments.

(A) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary.

(B) Assessments for Children's Level of Care determination of medical necessity must follow a specified assessment process through OHCA or their designated agent. Only one assessment is allowable per provider per member. If there has been a break in service over a six month period, or the assessment is conducted for the purpose of determining a child's need for inpatient psychiatric admission, then an additional unit can be authorized by OHCA, or their designated agent.

(2) Individual and/or Interactive psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis.

(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan.

(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in an office, clinic, or other confidential setting. Group therapy is a face-to-face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six for ages four up to 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.

(5) Assessment/Evaluation and testing is provided by apsychologist, certified psychometrist, psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of two), per provider is allowed ~~with authorization~~ every 12 months. ~~In circumstances where it is determined that further testing is medically necessary and/or needed for specialty testing, additional hours/units may be prior authorized by the OHCA or designated agent based upon medical necessity and consultation review.~~There may be instances when further testing is appropriate based on established medical necessity criteria found in the Behavioral Health Provider Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Test results must be reflected in the service plan or medical record. The service plan must clearly document the need for the testing and what the testing is expected to achieve. ~~Any testing performed for a child under three must be prior authorized.~~Testing for a child younger than three must be medically necessary and meet established Child (0-36 months of Age) criteria as set forth in the Behavioral Health Provider Manual. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Crisis intervention services for the purpose of stabilization and hospitalization diversion as clinically appropriate.

(7) Payment for therapy services provided by a LBHP to any one member is limited to eight sessions/units per month. ~~All units/sessions, except Assessment and Crisis Intervention must be authorized by the OHCA or their designated agent.~~ A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. Case Management services are considered an integral component of the behavioral health services listed above.

(8) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or testing ~~without authorization~~unless allowed by the OHCA or their designated agent.

(d) **Home and Community Based Waiver Services for the ~~Mentally Retarded~~Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the ~~mentally retarded~~intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

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

PART 67. BEHAVIORAL HEALTH CASE MANAGEMENT SERVICES

317:30-5-596. Coverage by category

Payment is made for behavioral health case management services as set forth in this Section.

(1) Payment is made for services rendered to SoonerCare ~~member's~~members as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for behavioral health case management services are persons under age 21 who are in imminent risk of out-of-home placement for psychiatric or substance abuse reasons or are in out-of-home placement due to psychiatric or substance abuse reasons and chronically and/or severely mentally ill adults who are institutionalized or are at risk of institutionalization. All behavioral health case management services will be subject to medical necessity criteria.

(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides assessment of case management needs, development of a case management care plan, referral, linkage, monitoring and advocacy on behalf of the member to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by ODMHSAS. In order to be compensable, the service must be performed utilizing the Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service member and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Assistive activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the member and family (if applicable) by phone or face-to-face, to identify immediate needs for return to home/community no more than 72 hours after notification that the member/family requests case management services. For member's discharging from a higher level of care than outpatient, the higher level of care facility is responsible for scheduling an appointment with a case management agency for transition and post discharge services. The case manager will make contact with the member and family (if applicable) for transition from the higher level of care than outpatient back to the community, within 72 hours of discharge, and then conduct a follow-up appointment/contact within seven days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. Case Managers may also provide crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within two business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The member/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) An eligible member/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the member and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized plan of care.

(iv) The individual plan of care must include general goals and objectives pertinent to the overall recovery of the ~~member~~member's (and ~~family's~~ family, if applicable) needs. Progress notes must relate to the individual plan of care and describe the specific activities to be performed. The individual plan of care must be developed with participation by, as well as, reviewed and signed by the member, the parent or guardian (if the member is under 18), the behavioral health case manager, and a Licensed Behavioral Health Professional as defined in OAC 317:30-5-240(d).

(v) SoonerCare reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of individual plan of care development.

(II) Face-to-face meetings with the member and/or the parent/guardian/family member for the implementation of activities delineated in the individual plan of care.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the individual plan of care.

(IV) Supportive activities such as non face-to-face communication with the member and/or parent/guardian/family member.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the individual plan of care.

(VI) Monitoring of the individual plan of care to reassess goals and objectives and assess progress and or barriers to progress.

(VII) Crisis diversion (unanticipated, unscheduled situation requiring supportive assistance, face-to-face or telephone, to resolve immediate problems before they become overwhelming and severely impair the individual's ability to function or maintain in the community) to assist member(s) from progression to a higher level of care.

(VIII) Transitioning from institutions to the community. Individuals (except individuals ages 22 to 64 who reside in an institution for mental diseases (IMD) or individuals who are inmates of public institutions) may be considered to be transitioning to the community during the last 60 consecutive days of a covered, long-term, institutional stay that is 180 consecutive days or longer in duration. For a covered, short term, institutional stay of less than 180 consecutive days, individuals may be considered to be transitioning to the community during the last 14 days before discharge. These time requirements are to distinguish case management services that are not within the scope of the institution's discharge planning activities from case management required for transitioning individuals with complex, chronic, medical needs to the community.

(B) Levels of Case Management

(i) Basic Case Management/Resource Coordination. Resource coordination services are targeted to adults with serious and persistent mental illness and children and adolescents with mental illness or serious emotional disturbance, and their families, who need assistance in accessing, coordination, and monitoring of resources and services. Services are provided to assess an ~~individuals~~individual's strengths and meet needs in order to achieve stability in the community. Standard managers have with caseloads of 30 - 35 members.

(ii) Intensive Case Management (ICM)/Wraparound Facilitation Case Management (WFCM). Intensive Case Management is targeted to adults with serious and persistent mental illness (including ~~member's~~members in PACT programs) and Wraparound Facilitation Case Management is targeted to children with serious mental illness and emotional disorders (including ~~member's~~members in a System of Care Network) who are deemed high risk and in need of more intensive CM services. It is designed to ensure access to community agencies, services, and people whose functions are to provide the support, training and assistance required for a stable, safe, and healthy community life, and decreased need for higher levels of care. To produce a high fidelity wraparound process, a facilitator can facilitate between 8 and 10 families. To ensure that these intense needs are met, case manager caseloads are limited ~~to 25~~between 10-15 caseloads. The ICM shall be a Certified Behavioral Health Case Manager, have a minimum of 2 years Behavioral Health Case Management experience, crisis diversion experience, must have attended the ODMHSAS 6 hours ICM training, and 24 hour availability is required.

(C) **Excluded Services.** SoonerCare reimbursable behavioral health case management does not include the following activities:

(i) Physically escorting or transporting a member or family to scheduled appointments or staying with the member during an appointment; or

(ii) Managing finances; or

(iii) Providing specific services such as shopping or paying bills; or

(iv) Delivering bus tickets, food stamps, money, etc.; or

(v) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(vi) Filling out forms, applications, etc., on behalf of the member when the member is not present; or

(vii) Filling out SoonerCare forms, applications, etc.;

(viii) Mentoring or tutoring;

(ix) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies ; ~~or~~

(x) Non face-to-face time spent preparing the assessment document and the service plan paperwork~~.~~;

(xi) monitoring financial goals;

(xii) services to nursing home residents;

(xiii) psychotherapeutic or rehabilitative services, psychiatric assessment, or discharge; or

(xix) services to members residing in ICF/MR facilities.

(D) **Excluded Individuals.** The following SoonerCare members are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through OKDHS/OJA staff without special arrangements with OKDHS, OJA, and OHCA;

(ii) Members receiving Residential Behavior Management Services (RBMS) in a foster care or group home setting unless transitioning into the community;

(iii) Residents of ICF/MR and nursing facilities unless transitioning into the community;

(iv) Members receiving services under a Home and Community Based services (HCBS) waiver program.

(E) Case management services provided to Medicare eligible members should be filed directly with the fiscal agent.

(F) **Documentation requirements.** The service plan must include general goals and objectives pertinent to the overall recovery needs of the member. Progress notes must relate to the service plan and describe the specific activities performed. Behavioral health case management service plan development is compensable time if the time is spent communicating with the participation by, as well as, reviewed and signed by the member, the behavioral health case manager, and a licensed behavioral health professional as defined at OAC 317:30-5-240.3(a). All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service, plan documentation of each session must include but is not limited to:

(i) date;

(ii) person(s) to whom services are rendered;

(iii) start and stop times for each service;

(iv) original signature or the service provider (original signatures for faxed items must be added to the clinical file within 30 days);

(v) credentials of the service provider ;

(vi) specific service plan needs, goals and/or objectives addressed;

(vii) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address needs, goals and/or objectives;

(viii) progress and barriers made towards goals, and/or objectives;

(ix) member (family when applicable) response to the service;

(x) any new service plan needs, goals, and/or objectives identified during the service; and

(xi) member satisfaction with staff intervention.

(G) **Case Management Travel Time.** The rate for case management services assumes that the case manager will spend some amount of time traveling to the member for the face-to-face service. The case manager must only bill for the actual face-to-face time that they spend with the member and not bill for travel time. This would be considered duplicative billing since the rate assumes the travel component already.

317:30-5-596.1. Prior authorization

(a) ~~Prior authorization of behavioral health case management services is mandatory. The provider must request prior authorization from the OHCA, or its designated agent.~~Prior to providing behavioral health case management services provider must submit to OHCA, or its designated agent member information which includes but is not limited to the following:

(1) Complete multi-axial DSM diagnosis with supportive documentation and mental status examination summary;

(2) Treatment history;

(3) Current psycho social information;

(4) Psychiatric history; and

(5) Fully developed case management service plan, with goals, objectives, and time frames for services.

(b) SoonerCare members who are eligible for services will be considered for ~~prior authorization~~ behavioral health case management services after receipt of complete and appropriate information submitted by the provider in accordance with the guidelines for behavioral health case management services developed by OHCA or its designated agent. Based on diagnosis, functional assessment, history and other SoonerCare services being received, the SoonerCare member may be ~~approved to receive~~eligible for case management services. SoonerCare members who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive SoonerCare compensable case management services unless transitioning from a higher level of care than outpatient. ~~A SoonerCare member may be approved for a time frame of one to twelve months. The OHCA, or its designated agent will review the initial request in accordance with the guidelines for prior authorization in the Outpatient Behavioral Health Service Provider Manual. An initial request for case management services requires the provider to submit specific documentation to OHCA, or its designated agent.~~ A fully developed individual plan of service is ~~not~~ required ~~at the time of initial request~~prior to providing the service. The provider will be given a time frame to develop the individual plan of service while working with the child and his/her family ~~and corresponding units of service will be approved prior to the~~

~~completion of the service plan. Prior authorization requests will be reviewed by licensed behavioral health professionals as defined at OAC 317:30-5-240~~.

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-741. Coverage by category

(a) **Adults.** Outpatient Behavioral Health Services in Therapeutic Foster settings are not covered for adults.

(b) **Children.** Outpatient behavioral health services are ~~authorized~~allowed in therapeutic foster care settings for certain children and youth ~~by the designated agent of the Oklahoma Health Care Authority~~as medically necessary. The children and youth ~~authorized for~~receiving services in this setting have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this setting. ~~The medical necessity criteria are continually met for initial requests for services and all subsequent requests for services/ extensions. Medical necessity criteria is delineatedin the OHCA Behavioral Health Provider Manual.~~

(c) **Medical necessity criteria.** Medical necessity criteria is delineated as follows:

(1) An Axis I primary diagnosis from the most recent edition of "The Diagnostic and Statistical Manual of Mental Disorders" (DSM), with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Licensed Behavioral Health Professional (LBHP) as defined in OAC 317:30-5-240.3(a) within the 30 day period resulting in an Axis I primary diagnosis form the most recent edition of "the Diagnostic and Statistical Manual of Mental Disorders"(DSM) primary diagnosis with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.

(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal guardian/parent of the child (OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

[OAR Docket #12-607; filed 5-10-12]

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

[OAR Docket #12-605]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Coverage and Exclusions
317:35-3-2. [AMENDED]
(Reference APA WF # 11-25B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
January 18, 2012, through February 16, 2012
Public hearing:
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Submitted to Senate:
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April 23, 2012
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 8, 2012
Final adoption:
May 8, 2012
Effective:
June 25, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
SoonerCare non-emergency transportation rules are revised to clarify OHCA's current policy concerning meals and lodging, travel distance, and eligibility. This rule will assist with future cost savings and prevent abuse of services. This rule will also ensure services for current and future SoonerCare members.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-2. SoonerCare transportation and subsistence

(a) The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. ~~Payment for covered services to the broker is reimbursed under a capitated methodology based on per member per month.~~As the Medicaid Agency, OHCA is the payer of last resort, with few exceptions. When other resources are available, those resources must first be utilized. Exceptions to this policy are those receiving medical treatment through Indian Health Services and those eligible for the Crime Victims Compensation Act. The agency contracts directly with ambulance and air providers for all other transportation needs for eligible members not provided by SoonerRide. SoonerRide excludes those individuals who are categorized as:

(1) Qualified Medicare Beneficiaries ~~Plus(QMBP)~~ (QMB)when SoonerCare pays only the Medicare premium, deductible, and co-pay;

(2) Specified Low Income Medicare Beneficiaries (SLMB);

(3) Qualifying Individuals-1;

(4) individuals who are in an institution for mental disease (IMD)~~,inpatient~~;

(5) inpatient;

(~~5~~6) institutionalized (i.e. long-term care facility);

(~~6~~7) Home and Community Based Waiver members with the exception of the In-home Supports Waiver for Children ~~and~~, the ADvantage Waiver, the Living Choice demonstration, the Sooner Seniors Waiver, the My Life; My Choice Waiver and the Medically Fragile Waiver.

(b) Members seeking medically necessary non-emergency transportation will be required to contact the SoonerRide reservation center. Contact will be made via a toll-free phone number which is answered Monday through Saturday, 8 a.m. to 6 p.m. Whenever possible, the member is required to notify SoonerRide at least 72 hours prior to the appointment. The member is asked to furnish the SoonerRide reservation center their SoonerCare member number, home address, the time and date of the medical appointment, the address and phone number of the medical provider, and any physical/mental limitations which will impact the type of transportation needed. SoonerRide makes arrangements for the most appropriate, least costly transportation. SoonerRide verifies appointments when appropriate. If the member disagrees with the transportation arranged or denied by SoonerRide, an appeal must be filed with OHCA according to OAC 317:2-1-2. The appropriateness of transportation may be appealed only to the extent that the transportation does not meet the medical needs of the member. Dissatisfaction with the use of public transportation, shared rides, type of vehicle, etc., is not appropriate grounds for appeal. The Oklahoma Health Care Authority's decision is final.

(1) **Authorization for transportation by private vehicle or bus.** Transportation by private vehicle or bus is administered through the broker when it is necessary for an eligible member to receive medical services.

(2) **Authorization for transportation by taxi.** Taxi service may be authorized at the discretion of the broker.

(3) **Transportation by ambulance (ground, air ambulance or helicopter).** Transportation by ambulance is compensable for individuals eligible for SoonerCare benefits when other available transportation does not meet the medical needs of the individual. Payment is made for ambulance transportation to and/or from a medical facility for medical care compensable under SoonerCare.

(4) **Transportation by airplane.** When an individual's medical condition is such that transportation out-of-state by a commercial airline is required, approval for airfare must be secured by telephoning the OHCA who will make the necessary flight arrangements.

(5) **Subsistence (sleeping accommodations and meals).** ~~An individual who is eligible for transportation to or from a medical facility to obtain medical services may receive assistance with the necessary expenses of lodging and meals from SoonerCare funds. If the individual needs assistance with necessary expenses of lodging and meals, the member may pay for the lodging and meals and then submit a travel reimbursement form for reimbursement; if the member does not have the funds for the necessary subsistence, authorization is made by the local office on the Room and Board Order form. The travel reimbursement form may be obtained by contacting OHCA or the local OKDHS office. Any subsistence expense claimed on the travel reimbursement form must be documented with receipts, and reimbursement cannot state per diem amounts. Payment for meals is only provided for overnight stays that are more than 50 miles from the home and are based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.~~Lodging and meals assistance for eligible members is provided only when medically necessary in connection with transportation to and from SoonerCare compensable services. All efforts to secure a temporary place to stay either by the hospital or a nonprofit organization must be exhausted prior to seeking reimbursement for lodging.

(A) Lodging and/or meals are reimbursable when prior authorized. The following factors may be considered by OHCA when authorizing reimbursement:

(i) travel is to obtain specialty care; and

(ii)the trip cannot be completed during SoonerRide operating hours;

(iii) the trip is more than 100 miles from the member's city of residence; or

(iv) the treatment requires an overnight stay.

(B) When a member is not required to have a PCP or when a PCP referral is not required to obtain a SoonerCare covered service, a member may go to any provider they choose but SoonerCare will not reimburse for transportation, lodging, or meals if the distance is beyond what is considered the nearest appropriate facility.

(C) Meals will be reimbursed only if an overnight stay occurs and the stay meets the lodging criteria.

(D) Reimbursement for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

(E) During inpatient or outpatient medical stays, meals and lodging are limited to 14 days for each medical stay unless the OHCA prior authorizes additional days. A member may not receive reimbursement for lodging and meals for days the member is an inpatient in a hospital or medical facility.

(F) A member who needs lodging and/or meal assistance must first seek services with an OHCA contracted lodging provider. If the lodging provider provides meals the member is not eligible for separate reimbursement and may not seek assistance for meals obtained outside of the contracted lodging facility. If lodging and/or meal assistance with contracted lodging providers is not available, the member may request reimbursement assistance by submitting a travel reimbursement form. The travel reimbursement form may be obtained by contacting SoonerCare Care Management division. Any lodging and/or meal expenses claimed on the travel reimbursement form must be documented with receipts, and reimbursement will not exceed established state per diem amounts. The OHCA has discretion and the final authority to approve or deny meals and lodging reimbursement.

(6) **Escort assistance required.** Payment for transportation and subsistence of one escort may be authorized if the service is required. Only one escort may be authorized. It is the responsibility of the OHCA to determine this necessity. The decision should be based on the following circumstances:

(A) when the individual's health or disability does not permit traveling alone; and

(B) when the individual seeking medical services is a minor child.

[OAR Docket #12-605; filed 5-10-12]

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

[OAR Docket #12-592]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-2. [AMENDED]
317:35-5-8. [AMENDED]
Subchapter 7. Medical Services
Part 5. Determination of Eligibility for Medical Services
317:35-7-37. [AMENDED]
317:35-7-48. [AMENDED]
Part 7. Certification, Redetermination and Notification
317:35-7-60. [AMENDED]
317:35-7-60.1. [AMENDED]
(Reference APA WF # 11-03B)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 2303 of the Patient Protection and Affordable Care Act

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April 23, 2012
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 8, 2012
Final adoption:
May 8, 2012
Effective:
June 25, 2012

SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
OHCA rules for the SoonerPlan Family Planning Program are revised to remove references to the Family Planning Waiver. Section 2303 of the Patient Protection and Affordable Care Act allows individuals receiving Family Planning Waiver services to receive those same services plus additional family planning and family planning related services under the Title XIX State Plan rather than a waiver program. In addition to a broader service package, the State Plan option allows a more efficient way of making future changes to the SoonerPlan program. If approved, the rule change will allow over 32,000 SoonerPlan members and future members to receive the enhanced package of State Plan Family Planning services. The rule revision also includes the removal of language relating to family planning centers, clarification of eligibility rules and other minor policy corrections.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-2. Categorically related programs

(a) Categorical relationship is established using the same definitions of age, disability and blindness as used by the Social Security Administration (SSA) in determining eligibility for Supplemental Security Income (SSI) or SSA benefits. If the individual is a SSA/SSI recipient in current payment status (including presumptive eligibility), a TANF recipient, or is under age 19, categorical relationship is automatically established. Categorical relationship to pregnancy-related services is established when the determination is made by medical evidence that the individual is or has been pregnant. Pregnancy-related services include all medical services provided within the scope of the program during the prenatal, delivery and postpartum periods. For an individual age 19 or over to be related to AFDC, the individual must have a minor dependent child. Categorical relationship to Refugee services is established in accordance with OAC 317:35-5-25. Categorical relationship for the Breast and Cervical Cancer Treatment program is established in accordance with OAC 317:35-21. Categorical relationship for the SoonerPlan Family Planning ~~Waiver~~ Program is established in accordance with OAC 317:35-5-8. Categorical relationship for pregnancy related benefits covered under Title XXI is established in accordance with OAC 317:35-22. Benefits for pregnancies covered under Title XXI medical services are provided within the scope of the program during the prenatal, delivery and postpartum care when included in the global delivery payment. To be eligible for SoonerCare benefits, an individual must be related to one of the following:

(1) Aged
(2) Disabled
(3) Blind
(4) Pregnancy
(5) Aid to Families with Dependent Children
(6) Refugee
(7) Breast and Cervical Cancer Treatment program
(8) SoonerPlan Family Planning ~~Waiver~~ Program
(9) Benefits for pregnancies covered under Title XXI.

(b) The Authority may provide SoonerCare to reasonable categories of individuals under age 21 who are not receiving cash assistance under any program but who meet the income requirement of the State's approved AFDC plan.

(1) Individuals eligible for SoonerCare benefits include individuals between the ages of 19 and 21:

(A) for whom a public agency is assuming full or partial financial responsibility who are in custody as reported by the Oklahoma Department of Human Services (OKDHS) and in foster homes, private institutions or public facilities; or

(B) in adoptions subsidized in full or in part by a public agency; or

(C) individuals under age 21 receiving active treatment as inpatients in public psychiatric facilities or programs if inpatient psychiatric services for individuals under age 21 are provided under the State Plan and the individuals are supported in full or in part by a public agency; or

(2) Individuals eligible for SoonerCare benefits include individuals between the ages of 18 and 21 if they are in custody as reported by OKDHS on their 18th birthday and living in an out of home placement.

317:35-5-8. Determining categorical relationship for the SoonerPlan Family Planning ~~Waiver~~ Program

All ~~uninsured~~non-pregnant women and men ages 19 and older, ~~who have not undergone a sterilization procedure,~~ regardless of pregnancy or paternity history, with family income at or below 185% of the federal poverty level and who are otherwise ineligible for SoonerCare ~~benefits~~ are categorically related to the SoonerPlan Family Planning ~~Waiver~~ Program. If eligible for SoonerCare benefits, the individual can choose to enroll only in ~~the Family Planning Waiver Program~~SoonerPlan with the option of applying for SoonerCare at any time.

SUBCHAPTER 7. MEDICAL SERVICES

PART 5. DETERMINATION OF ELIGIBILITY FOR MEDICAL SERVICES

317:35-7-37. Financial eligibility of individuals categorically related to AFDC, or pregnancy-related services ~~or Family Planning Waiver Program~~

~~(a) AFDC and/or pregnancy-related services.~~

(a~~1~~) In determining financial eligibility for an individual related to AFDC or pregnancy-related services, the income of the following persons (if living together or if living apart as long as there has been no break in the family relationship) are considered. These persons include:

(1~~A~~) the individual;

(2~~B~~) the spouse of the individual;

(3~~C~~) the biological or adoptive parent(s) of the individual who is a minor dependent child. Income of the stepparent of the minor dependent child is determined according to OAC 35-10-26(a)(8);

(4~~D~~) minor dependent children of the individual if the children are being included in the case for Medicaid. If the individual is 19 years or older and not pregnant, at least one minor dependent child must be living in the home and included in the case for the individual to be categorically related to AFDC;

(5~~E~~) blood related siblings, of the individual who is a minor child, if they are included in the case for Medicaid;

(6~~F~~) a caretaker relative and spouse (if any) and minor dependent children when the caretaker relative is to be included for coverage.

(b~~2~~) The family has the option to exclude minor dependent children or blood related siblings [see OAC 317:35-7-37(1)(D) and (E)] and their income from the eligibility process. However, for the adult to be eligible, at least one minor child and

his/her income [see OAC 317:35-7-37(a)(4)] must be included in the case. ~~The worker has the responsibility to inform the family of the most advantageous consideration in regard to coverage and income.~~ When determining financial eligibility for an individual related to AFDC or pregnancy-related services, consideration is not given to income of any person who is aged, blind or disabled and is determined to be categorically needy.

(c~~3~~) An individual categorized as aged, blind, or disabled who is not an SSI recipient has an option to be categorically related to either AFDC or ABD. The individual may be included in the AFDC related benefit group pending determination of eligibility for ABD or SSI if all eligibility requirements are met.

(d~~4~~) An individual who receives SSI cannot be included in the AFDC related benefit group. When the only dependent child is receiving SSI, the natural or adoptive parent(s) or caretaker relative may be related to AFDC if all other factors of eligibility are met. The benefit group will consist of the adult(s) only. Applicants and ~~recipients~~members are informed of their responsibility to report to the OKDHS if any member of the benefit group makes application for SSI or becomes eligible for SSI.

~~(b) **Family Planning Waiver Program.** In determining financial eligibility for the FPW program the income of the individual and spouse (if any) is considered. The individual has the option to include or exclude minor dependent children and their income in the eligibility process. The worker has the responsibility to inform the individual of the most advantageous consideration in regard to coverage and income.~~

317:35-7-48. Eligibility for the SoonerPlan Family Planning ~~Waiver~~ Program

(a) ~~Women~~Non-pregnant women and men ages 19 and above are eligible to receive family planning services if they meet all of the conditions of eligibility in paragraphs (1), (2), (3), and (4) of this Subsection. This is regardless of pregnancy or paternity history and includes women who gain eligibility for SoonerCare family planning services due to a pregnancy, but whose eligibility ends 60 days postpartum.

(1) The countable income is at or below 185% of the federal poverty level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is $240 per each full-time or part-time employed member of the benefit group. Deductions for work related expenses for self-employed individuals are found at OAC 317:35-10-26(b)(1).

(2) In determining financial eligibility for the SoonerPlan Family Planning program the income of the individual and spouse (if any) is considered. The individual has the option to include or exclude minor dependent children and their income in the eligibility process.

(3) SoonerPlan members with minor dependent children and a parent absent from the home are required to cooperate with the Oklahoma Department of Human Services, Child Support Services Division (OCSS) in the collection of child support payments. Federal regulations provide a waiver of this requirement when cooperation is not in the best interest of the child.

(~~2~~4) Individuals eligible for SoonerCare can choose to enroll only in the SoonerPlan Family Planning ~~Waiver~~ Program with the option of applying for SoonerCare at any time.

(~~3~~5) ~~The individual is uninsured.~~ Persons who have Medicare or creditable health insurance coverage are not ~~eligible~~precluded from applying for the SoonerPlan Family Planning ~~Waiver~~ program. ~~A stand alone policy such as dental, vision or pharmacy is not considered creditable health insurance coverage.~~

~~(4) The individual has not undergone a sterilization procedure.~~

(b) All health insurance is listed on the OKDHS computer system in order for OHCA Third Party Liability Unit to verify insurance coverage. The OHCA is the payer of last resort.

(c) Income for the SoonerPlan Family Planning ~~Waiver~~ Program does not require verification, unless questionable. If the income is questionable the worker must verify the income.

(d) There is not an asset test for the SoonerPlan Family Planning ~~Waiver~~ Program.

PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION

317:35-7-60. Certification for ~~Medical Services~~SoonerCare

(a) The rules in this Section apply to all categories of eligibles **EXCEPT**:

(1) categorically needy SoonerCare ~~Health Benefit recipients~~members who are categorically related to AFDC or Pregnancy Related Services, AND

(2) who if eligible, would be enrolled in SoonerCare, or

(3) individuals categorically related to the Family Planning ~~Waiver~~ Program.

(b) An individual determined eligible for ~~Medical Services~~SoonerCare may be certified for a medical service provided on or after the first day of the third month prior to the month of application if all eligibility criteria are met during the three month period. The certification period is determined beginning with the month the medical service was received or expected to be received or the month of application for categorically needy cases in which a medical service has not been received. The period of certification may cover retroactive or future months. ~~Assignment of the certification period is dependent on the categorical relationship. Form MA-2, Medical Assistance Computation Work Sheet, is used to determine the certification period. The certification period in family cases is assigned for the shortest period of eligibility determined for any individual in the case.~~

(1) **Certification as categorically needy.** A categorically needy individual who is categorically related to ABD is assigned a certification period of 12 months. A categorically needy individual who is determined eligible for a State Supplemental Payment (SSP) is certified effective the month of application. If the individual is also eligible

for payment for medical services received during the three months preceding the month of application, the ~~Medicaid~~SoonerCare benefit is certified for the appropriate months. If the individual is not eligible for SSP, the first month of certification is the month that a medical service was provided or, if no medical service was provided, the month of application.

(A) **Certification of individuals categorically needy and categorically related to ABD.** The certification period for the individual categorically related to ABD can be assigned for up to 12 months. The individual must be determined as categorically needy for each month of the certification period. The certification period is 12 months unless the individual:

(i) is certified as eligible in a money payment case during the 12 month period;

(ii) is certified for long-term care during the 12 month period;

(iii) becomes ineligible for medical assistance after the initial month;

(iv) becomes ineligible as categorically needy; or

(v) is deceased.

(B) **Certification period.** If any of the situations listed in subparagraph (A) of this paragraph occur after the initial month, the case is closed by the worker.

(i) If income and/or resources change after certification causing the case to exceed the categorically needy maximums, the case is closed.

(ii) A pregnant individual included in an ABD case which closes continues to be eligible for pregnancy related services through the postpartum period.

(2) **Certification of individuals categorically related to ABD and eligible as Qualified Medicare Beneficiaries Plus.** The ~~Medicaid~~SoonerCare benefit may be certified on the first day of the third month prior to the month of application or later. If the individual receives Medicare and is eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the month of certification for SSP. If the individual receives Medicare and is not eligible for SSP, the effective date of certification for the Medicare Part B premium buy-in is the first day of the month following the month in which the eligibility determination is made (regardless of when application was made).

(A) An individual determined eligible for QMBP benefits is assigned a certification period of 12 months. At any time during the certification period that the individual becomes ineligible, the case is closed using regular negative action procedures.

(B) At the end of the certification period a redetermination of QMBP eligibility is required, using the same forms and procedures as for ABD categorically needy individuals.

(3) **Certification of individuals categorically related to ABD and eligible as Qualified Disabled and Working Individual.** The Social Security Administration is responsible for referrals of individuals potentially eligible for QDWI. Eligibility factors verified by the SSA are Medicare Part A eligibility and discontinuation of disability benefits due to excessive earnings. When the OKDHS State Office receives referrals from SSA the county will be notified and is responsible for obtaining an application and establishing other factors of eligibility. If an individual contacts the county office stating he/she has been advised by SSA that ~~they are~~he/she is a potential QDWI, the county takes a ~~Medicaid~~SoonerCare application. ~~If the individual does not have verification of eligibility factors determined by SSA, the county contacts OKDHS, FSSD, State Office, for assistance in verifying those factors. The verification will be obtained by OKDHS State Office and sent to the county office.~~ The effective date of certification for QDWI benefits is based on the date of application and the date all eligibility criteria, including enrollment for Medicare Part A, are met. For example, if an individual applies for benefits in October and is already enrolled in Medicare Part A, eligibility can be effective October 1 (or up to three months prior to October 1, if all eligibility criteria are met during the three month period). However, if in the example, the individual's enrollment for Part A is not effective until November 1, eligibility cannot be effective until that date. Eligibility can never be effective prior to July 1, 1990, the effective date of this provision. These cases will be certified for a period of 12 months. At the end of the 12-month period, eligibility redetermination is required. If the individual becomes ineligible at any time during the certification period, the case is closed. ~~The reason for closure is 69, and the worker completes the Notice to Client form.~~

(4) **Certification of individuals categorically related to ABD and eligible as Specified Low-Income Medicare Beneficiary (SLMB).** The effective date of certification of SLMB benefits may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for SLMB benefits is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period a redetermination of SLMB eligibility is required. A redetermination of SLMB eligibility must also be done at the same time a dually eligible individual has a redetermination of eligibility for other ~~Medicaid~~ SoonerCare benefits such as long-term care.

(5) **Certification of individuals categorically related to disability and eligible for TB related services.**

(A) An individual determined eligible for TB related services may be certified the first day of the third month prior to the month of application or later, but no earlier than the first day of the month the~~as long as verification is received of a diagnosis of~~ TB infection is diagnosed.

(B) A certification period of 12 months will be assigned. At any time during the certification period

that the individual becomes ineligible, the case is closed using the regular negative action procedures.

(C) At the end of the certification period a new application will be required if additional treatment is needed.

(6) **Certification of individuals categorically related to ABD and eligible as Qualifying Individuals.** The effective date of certification for the QI-1 may begin on the first day of the third month prior to the month of application or later. A certification can never be earlier than the date of entitlement of Medicare Part A. An individual determined eligible for QI benefits is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of QI eligibility is required.

(A) Since the State's allotment to pay Medicare premiums for this group of individuals is limited, the State must limit the number of QIs so that the amount of assistance provided during the year does not exceed the State's allotment for that year.

(B) Persons selected to receive assistance are entitled to receive assistance with their Medicare premiums for the remainder of the federal fiscal year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year.

(7) **Certification of individuals Related to Aid to the Disabled for TEFRA.** The certification period for individuals categorically related to the Disabled for TEFRA is 12 months.

317:35-7-60.1. Certification for the SoonerPlan Family Planning ~~Waiver~~ Program.

The effective date of certification for the SoonerPlan Family Planning ~~Waiver~~ Program is the date of application or later. The period of certification may not be for a retroactive period. An individual determined eligible for the SoonerPlan Family Planning ~~Waiver~~ Program is assigned a certification period of 12 months. At any time during the certification period the individual becomes ineligible, the case is closed using standard negative action procedures. At the end of the certification period, a redetermination of eligibility is required.

[OAR Docket #12-592; filed 5-10-12]

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

[OAR Docket #12-619]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-4. [AMENDED]
Part 5. Countable Income and Resources
317:35-5-43. [AMENDED]
Subchapter 22. Pregnancy Related Benefits Covered Under Title XXI
317:35-22-1. [AMENDED]
(Reference APA WF # 11-40)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Eligibility policy is revised for clarity and updates. All changes are minor and will not affect programs or budget. The revisions include changing a form number and altering punctuation to ensure the meaning and intention of the policy is clear.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 1. DETERMINATION OF QUALIFYING CATEGORICAL RELATIONSHIPS

317:35-5-4. Determining categorical relationship to the disabled

An individual is related to disability if he/she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than 12 months.

(1) **Determination of categorical relationship to the disabled by SSA.** The procedures outlined in (A) through (G) of this paragraph are applicable when determining categorical relationship based on a SSA disability decision:

(A) **Already determined eligible for Social Security disability benefits.** If the applicant states he/she is already receiving Social Security benefits on the basis of disability, the information is verified by seeing the applicant's notice of award or the Social Security benefit check. If the applicant states an award letter approving Social Security disability benefits has been received but a check has not been received, this information is verified by seeing the award letter. Such award letter or check establishes categorical relationship. The details of the verification used are recorded in the case record.

(B) **Already determined eligible for SSI on disability.** If the applicant, under age 65, states he/she is already receiving SSI on the basis of his/her disability (or that a written notice of SSI eligibility on disability has been received but has not yet received a check) this information is verified by seeing the written notice or check. If neither are available, the county clears on the terminal system for the Supplemental Data Exchange (SDX) record. The SDX record shows, on the terminal, whether the individual has been approved or denied for SSI. If the individual has been approved for such benefits, the county uses this terminal clearance to establish disability for categorical relationship. The details of the verification used are recorded in the case record.

(C) **Pending SSI/SSA application or has never applied for SSI.** If the applicant says he/she has a pending SSI/SSA application, an SDX record may not appear on the terminal. Therefore, it is requested that the applicant bring the notice regarding the action taken on his/her SSI/SSA application to the county office as soon as it is received. The other conditions of eligibility are established while awaiting the SSI/SSA decision. When the SSI/SSA notice is presented, the details of the verification are recorded in the case record and the indicated action is taken on the Title XIX application. If the applicant says he/she has never applied for SSI/SSA but appears potentially eligible from the standpoint of unearned income and has an alleged disability which would normally be expected to last for a period of 12 months, he/she is referred to the SSA office to make SSI/SSA application immediately following the filing of the Title XIX application.

(D) **Already determined ineligible for SSI.** If the applicant says he/she has been determined ineligible for SSI, the written notice of ineligibility from SSA is requested to determine if the denial was based on failure to meet the disability definition. If the SSI notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the SSI denial, the Title XIX application is denied for the same reason. If written notice is not available, the SDX record on the terminal system is used. This record shows whether the individual has been determined eligible or ineligible for SSI. If he/she has been determined ineligible, the payment status code for ineligibility is shown. The definition of this code is found on OKDHS Appendix Q in order to determine the reason for SSI ineligibility. If the reason for SSI ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for SSI ineligibility was based on some reason other than failure to meet the disability definition (and therefore, a determination of disability was not made), the Level of Care Evaluation Unit (LOCEU) must determine categorical relationship. In any instance in which an applicant who was denied SSI on "disability" states the medical condition has worsened since the SSI denial, he/she is referred to the SSA office to reapply for SSI immediately following the filing of the Title XIX application.

(E) **Already determined ineligible for Social Security disability benefits.** If the applicant says he/she has been determined ineligible for Social Security disability benefits, he/she is requested to provide written notice of ineligibility to determine if the denial was based on failure to meet the disability definition. If the SSA notice shows ineligibility was due to not meeting the disability definition, and the applicant says the medical condition has not worsened since the denial, the Title XIX application is denied for the same reason. The details of the verification used are recorded in the case record. If the written notice is not available, TPQY procedure is used to verify the denial and the reason for ineligibility. If the reason for ineligibility was based on failure to meet the disability definition, the Title XIX application is denied for the same reason and the details of the verification are recorded in the case record. If the reason for ineligibility was based on some reason other than failure to meet the disability definition (and a determination of disability was, thus, not made), the LOCEU must determine categorical relationship. In any instance in which an applicant who was denied Social Security benefits on disability states the medical condition has worsened since the denial, he/she is referred to the SSA office to reapply immediately following the filing of the Title XIX application.

(F) **Determined retroactively eligible for SSA/SSI due to appeal.** If an individual becomes retroactively eligible for SSA/SSI due to a decision on an appeal, categorical relationship is established as of the effective date of the retroactive disability decision. Payment will be made for medical services only if the claim is received within 12 months from the date of medical services. If the effective date of the retroactive disability decision does not cover the period of the medical service because the SSA/SSI application was made subsequent to the service, a medical social summary with pertinent medical information is sent to the LOCEU for a categorical relationship decision for the time period of the medical service.

(G) **SSA/SSI appeal with benefits continued.** A Title XIX recipient who has filed an appeal due to SSA's determination that he/she is no longer disabled may continue to receive SSA benefits. The recipient has the option to have Title XIX benefits continued until the appeal decision has been reached. After the decision has been reached, the appropriate case action is taken. If SSA's decision is upheld, an overpayment referral is submitted for any Title XIX benefits the recipient received beginning with the month that SSA/SSI determined the recipient did not meet disability requirements.

(H) **Applicant deceased.** Categorical relationship to the disabled is automatically established if an individual dies while receiving a medical service or dies as a result of an illness for which he/she was hospitalized if death occurs within two months after hospital release. The details of the verification used are recorded in the case record.

(2) **Determination of categorical relationship to the disabled by the LOCEU.**

(A) A disability decision from the LOCEU to determine categorical relationship to the disabled is required only when SSA makes a disability decision effective after medical services were received or when the SSA will not make a disability decision. The LOCEU is advised of the basis for the referral. SSA does not make disability decisions on individuals who:

(i) have been determined ineligible by SSA on some condition of eligibility other than disability,

(ii) have unearned income in excess of the SSI standard and, therefore, are not referred to SSA, or

(iii) do not have a disability which would normally be expected to last 12 months but the applicant disagrees.

(B) A disability decision from the LOCEU is not required if the disability obviously will not last 12 months and the individual agrees with the short term duration. The case record is documented to show the individual agrees with the short term duration.

(C) The local OKDHS office is responsible for submitting a medical social summary on OKDHS form ~~ABCDM-80-B~~ABCDM-80-D 08MA022E with pertinent medical information substantiating or explaining the individual's physical and mental condition. The medical social summary should include relevant social information such as the worker's personal observations, details of the individual's situation including date of onset of the disability, and the reason for the medical decision request. The worker indicates the beginning date for the categorical relationship to disability. Medical information submitted might include physical exam results, psychiatric, lab, and x-ray reports, hospital admission and discharge summaries, and/or doctors' notes and statements. Copies of medical and hospital bill and OKDHS Form ~~MS-MA-5~~08MA005E are not normally considered pertinent medical information by themselves. Current (less than 90 days old) medical information is required for the LOCEU to make a decision on the client's current disability status. If existing medical information cannot be obtained without cost to the client, the county administrator authorizes either payment for existing medical information or one general physical examination by a medical or osteopathic physician of the client's choice. The physician cannot be in an intern, residency or fellowship program of a medical facility, or in the full-time employment of Veterans Administration, Public Health Service or other Agency. Such examination is authorized by use of OKDHS form ~~ABCDM-16~~08MA016E, Authorization for Examination and Billing. The OKDHS worker sends the ~~ABCDM-16~~08MA016E and OKDHS form ~~ABCDM-80~~ 08MA080E, Report of Physician's Examination, to the physician who will be completing the exam.

(i) **Responsibility of Medical Review Team in the LOCEU.** The responsibilities of the Medical Review Team in the LOCEU include:

(I) The decision as to whether the applicant is related to Aid to the Disabled.

(II) The effective date (month and year) of eligibility from the standpoint of disability. (This date may be retroactive for any medical service provided on or after the first day of the third month prior to the month in which the application was made.)

(III) A request for additional medical and/or social information when additional information is necessary for a decision.

(IV) Authorizing specialists' examinations as needed.

(V) Setting a date for re-examination, if needed.

(ii) **Specialist's examination.** If, on receipt of the medical information from the county office, the LOCEU needs additional medical information, the LOCEU may, at their discretion, make an appointment for a specialist's examination by a physician selected by the medical member of the team and authorize it on Form M-S-32, Request to Physician for Examination and Authorization for Billing,

routing the original of the form to the examining physician and a copy to the county office. As soon as the county receives a copy of Form M-S-32, the worker immediately notifies the individual of the appointment and explains that failure to keep the appointment with the specialist without good cause will result in denial of the application (or closure of the case in instances of determination of continuing disability). The worker assists the individual in keeping the appointment, if necessary.

(I) If the specialist requires additional laboratory work or X-rays, he/she should call the LOCEU for authorization. The LOCEU is responsible for making the decision regarding the request. If additional medical services are authorized, another Form M-S-32 will be completed.

(II) If the individual notifies the worker at least 24 hours prior to the date of the examination that he/she cannot keep the appointment, this constitutes good cause. In such an instance, the worker cancels the appointment, makes a new appointment, and submits information regarding the cancellation and the date of a new appointment to the LOCEU.

(III) When the individual fails to keep the appointment without advance notice, good cause must be determined. The worker determines the reasons and submits a memorandum to the LOCEU for a decision on good cause.

(IV) If the appointment was missed due to illness, the illness must be supported by a written statement from a physician. If missed for some reason other than illness, the reason must be supported by an affidavit signed by someone other than the individual or his/her representative and sworn to before a notary public or other person authorized to administer oaths. If, in the opinion of the LOCEU, good cause is established, the LOCEU and the county follow the same procedures as outlined in (2)(C)(ii) of this Section for any other specialist's examination. If, in the opinion of the LOCEU, good cause is not established, the LOCEU notifies the local office. The local office is responsible for denying the application or closing the case with notification to individual in accordance with OHCA and Department policy.

(D) When the LOCEU has made a determination of categorical relationship to disability and SSA later renders a different decision, the county uses the effective date of the SSA approval or denial as their date of disability approval or denial. No overpayment will occur based solely on the SSA denial superseding the LOCEU approval.

(E) Public Law 97-248, the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, provides coverage to certain disabled children living in the home if they would qualify for Medicaid as residents of nursing facilities, ICF/MRs, or inpatient acute care hospital stays expected to last not less than 60 days. In addition to disability LOCEU determines the appropriate level of care and cost effectiveness.

(3) **Determination of categorical relationship to the disabled based on TB infection.** Categorical relationship to disability is established for individuals with a diagnosis of tuberculosis (TB). An individual is related to disability for TB related services if he/she has verification of an active TB infection established by a medical practitioner.

(4) **Determination of categorical relationship to the disabled for TEFRA.** Section 134 of TEFRA allows states, at their option, to make Medicaid benefits available to children, under 19 years of age, living at home who are disabled as defined by the Social Security Administration, even though these children would not ordinarily be eligible for SSI benefits because of the deeming of parental income or resources. Under TEFRA, a child living at home who requires the level of care provided in an acute care hospital (for a minimum of 60 days), nursing facility or intermediate care facility for the mentally retarded, is determined eligible using only his/her income and resources as though he/she were institutionalized.

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-43. Third party resources; insurance, workers' compensation and Medicare

Federal Regulations require that all reasonable measures to ascertain legal liability of third parties to pay for care and services be taken. In instances where such liability is found to exist after SoonerCare has been made available, reimbursement to the extent of such legal liability must be sought. The applicant or member must fully disclose to OHCA that another resource may be available to pay for care. If OKDHS obtains information regarding other available resources from a third party, the worker must complete OKDHS Form 08AD050E, and submit to OHCA, Third Party Liability Unit. Certification or payment in behalf of an eligible individual may not be withheld because of the liability of a third party when such liability or the amount cannot be currently established or is not currently available to pay the individual's medical expense. The rules in this Section also apply when an individual categorically related to pregnancy-related services plans to put the child up for adoption. Any agreement with an adoption agency or attorneys shall include payment of medical care and must be considered as a possibly liable third party, regardless of whether agreement is made during prenatal, delivery or postpartum periods.

(1) **Insurance.**

(A) **Private insurance.** An individual requesting SoonerCare is responsible for identifying and providing information on any private medical insurance. He/she is also responsible for reporting subsequent changes in insurance coverage.

(B) **Government benefits.** Individuals requesting SoonerCare who are also eligible for Civilian Health and Medical Programs for Uniformed Services (CHAMPUS), must disclose that the coverage is available. They are considered a third party liability source.

(2) **Workers' Compensation.** An applicant for SoonerCare or a SoonerCare member that requires medical care because of a work injury or occupational disease must notify OHCA/TPL immediately and assist OHCA in ascertaining the facts related to the injury or disease (such as date, details of the accident, etc.). The OHCA periodically matches data with the Worker's Compensation Court on all cases under its jurisdiction. When any information regarding an applicant for SoonerCare or a SoonerCare member is obtained, the member must assist OHCA with the subrogation claim with the employer/insurer.

(3) **Third party liability (accident or injury).** When medical services are required for an applicant of SoonerCare or a SoonerCare member as the result of an accident or injury known to the worker, the member is responsible for reporting to OHCA/TPL the persons involved in the accident, date and details of the accident and possible insurance benefits which might be made available. If an automobile accident involves more than one car it is necessary to report liability insurance on all cars involved.

(A) If OKDHS receives information regarding a SoonerCare member or applicant seeking medical services due to an accident, the worker submits any information available to OHCA/TPL.

(B) If OHCA receives a claim for payment from SoonerCare funds and the diagnosis indicates the need for services may have resulted from an accident or injury involving third party liability, OHCA will attempt to contact the member to obtain details of the incident. If additional contact is necessary with the member, the local OKDHS office or OHCA representative may be requested by the OHCA/TPL Unit to submit the appropriate information.

(4) **Medicare eligibility.** If it appears the applicant may be eligible for Medicare but does not have a Medicare card or other verification, the information is cleared with the Social Security Office and the findings entered with the date of the verification in the record. If the applicant did not enroll for Part A or Part B at the time he/she became eligible for Medicare and is now subject to pay an escalated premium for Medicare enrollment, he/she is ~~not~~ required to do so. Payment can be made for services within the scope of SoonerCare.

(5) **Absent parent.**

(A) Applicants are required to cooperate with the Oklahoma Department of Human Services Oklahoma Child Support Services (OCSS) in the assignment of child/spousal support rights. The families involved are those with a minor child(ren) in the home. The child(ren) must be related to AFDC, AB or AD and have a parent(s) absent from the home. Any support collected on behalf of these families will be paid to them as if they were receiving non-public assistance child support services, with one exception. The exception is regarding child support collected for foster care child(ren) in OKDHS temporary custody. This support is paid to OKDHS Children and Family Services Division (CFSD). The child support income continues to be counted in determining SoonerCare eligibility. The rules in OAC 317:10 are used, with the following exceptions:

(i) In the event the family already has an existing child support case, the only action required is a memo to the appropriate OCSS district office notifying them of the certification.

(ii) Child/spousal support is always counted as income less any applicable income disregard. This income inclusion applies whether it is redirected to the CFSD or retained by the member.

(iii) Children who are in custody of OKDHS may be exempt from referral to OCSS. Should the pursuit of the OCSS services be determined to be detrimental to the OKDHS CFSD service plan, an exemption may be approved.

(B) Cash medical support may be ordered to be paid to the OHCA by the non-custodial parent if there is no access to health insurance at a reasonable cost or if the health insurance is determined not accessible to the child according to OCSS Rules. Reasonable is deemed to be 5% or less of the non-custodial parent's gross income. The administration and collection of cash medical support will be determined by OKDHS OCSS and will be based on the income guidelines and rules that are applicable at the time. However, at no time will the non-custodial parent be required to pay more than 5% of his/her gross income for cash medical support unless payment in excess of 5% is ordered by the Court. The disbursement and hierarchy of payments will be determined pursuant to OKDHS/OCSS guidelines.

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI

317:35-22-1. Pregnancy related benefits covered under Title XXI

(a) The revision of the definition of child at 42 CFR 457.10, allows states to cover pregnancy related services under Title XXI, individuals who would not otherwise qualify for services under SoonerCare. This coverage is intended to benefit newborn children who are Oklahoma residents at birth.

(b) To receive pregnancy related services under Title XXI, the pregnant woman must:

(1) be otherwise ineligible for any other categorically SoonerCare eligibility group;

(2) reside in Oklahoma with the intent to remain, at the time services are rendered;

(3) have household income at or below 185% FPL; and

(4) not be covered by creditable insurance, the term creditable insurance means coverage under a group health plan or other health insurance as defined in the Health Insurance Portability and Accountability Act (HIPAA).

(c) All services are subject to post payment review by the OHCA or its designated agent.

[OAR Docket #12-619; filed 5-10-12]

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

[OAR Docket #12-600]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.8 [AMENDED]
(Reference APA WF # 11-15)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Oklahoma Long-term Care Partnership Act, 63 O.S. § 1-1955.1, et seq.
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ANALYSIS:
Oklahoma Health Care Authority long-term care eligibility rules are revised to include a brief description of the Long-term Care Partnership program. The Long-term Care Partnership program (LTCP) allows individuals with qualified LTCP insurance policies the opportunity to protect certain assets in determining eligibility for SoonerCare long term care services.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41.8. Eligibility regarding long-term care services

(a) **Home Property.** In determining eligibility for long-term care services for applications filed on or after January 1, 2006, home property is excluded from resources unless the individual's equity interest in his or her home exceeds $500,000.

(1) Long-term care services include nursing facility services and other long-term care services. For purposes of this Section, other long-term care services include services detailed in (A) through (B) of this paragraph.

(A) A level of care in any institution equivalent to nursing facility services; and

(B) Home and community-based services furnished under a waiver.

(2) An individual whose equity interest exceeds $500,000 is not eligible for long-term care services unless one of the following circumstances applies:

(A) The individual has a spouse who is lawfully residing in the individual's home;

(B) The individual has a child under the age of twenty-one who is lawfully residing in the individual's home;

(C) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home; or

(D) The denial would result in undue hardship. Undue hardship exists when denial of SoonerCare long-term care services based on an individual's home equity exceeding $500,000 would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(3) Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The OKDHS Form 08MA010E, Acknowledgment of Temporary Absence/Home Property Policy, is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the member, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For members in nursing facilities, a lien may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the member when it has been determined, after

notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return home. However, a lien is not filed on the home property of the member while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for SoonerCare benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the member will be discharged from the facility and return home and a lien may be filed against real property owned by the member for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the member to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A member who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of TANF resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse or relative lives there (regardless of whether the absence is temporary).

(G) For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in-laws, mother, father, stepmother, stepfather, half-sister, half-brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

(H) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(b) **Promissory notes, loans, or mortgages.** The rules regarding the treatment of funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are found in (1) through (2) of this subsection.

(1) Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as assets transferred for less than fair market value in the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance unless the note, loan, or mortgage meets all of the conditions in paragraphs (A) through (C) of this paragraph.

(A) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(B) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(C) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

(2) Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The note, loan, or mortgage was purchased before February 8, 2006; or

(B) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in paragraph (1) of this subsection were met.

(c) **Annuities.** Treatment of annuities purchased on or after February 8, 2006.

(1) The entire amount used to purchase an annuity on or after February 8, 2006, is treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in (A) through (C) of this paragraph.

(A) The annuity is an annuity described in subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(B) The annuity is purchased with proceeds from:

(i) An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

(ii) A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Code of 1986;

(iii) A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(C) The annuity:

(i) is irrevocable and nonassignable;

(ii) is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and

(iii) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(2) In addition, the entire amount used to purchase an annuity on or after February 8, 2006, is treated as a transfer of assets unless the Oklahoma Health Care Authority is named as the remainder beneficiary either:

(A) in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

(B) in the second position after the community spouse, child under 21 years of age, or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

(d) **Life Estates.** This subsection pertains to the purchase of a life estate in another individual's home.

(1) The entire amount used to purchase a life estate in another individual's home on or after February 8, 2006, is treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one year after the date of the purchase.

(2) Funds used to purchase a life estate in another individual's home for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The life estate was purchased before February 8, 2006; or

(B) The life estate was purchased on or after February, 8, 2006, and the purchaser resided in the home for one year after the date of purchase.

(e) **Oklahoma Long-Term Care Partnership (LTCP) Program.** This subsection pertains to individuals with Oklahoma Long-Term Care Partnership policies. The Oklahoma Insurance Department approves long-term care insurance policies as Long-term Care Partnership Program policies. The face page of the policy document will indicate if the insurance qualifies as a Long Term Care Partnership Program policy.

(1) Benefits from the LTCP policy must be exhausted before the individual can be eligible for long term care under the SoonerCare program.

(2) Assets in an amount equal to the amount paid out under the LTCP policy can be protected for the insured individual once the LTCP policy benefits are exhausted. Protected assets are disregarded when determining eligibility for the SoonerCare program per 317:35-5-41.9(26). A record of the amount paid on behalf of the policy holder is available through the OHCA or insurance company holding the LTCP policy.

(A) At the time of application for SoonerCare the individual must determine the asset(s) to be protected. The protected asset(s) cannot be changed. If the value of the protected asset(s) decreases, the individual does not have the option to select additional assets to bring the total up to the protected amount.

(B) If the protected asset(s) are income-producing, the income earned while on SoonerCare is counted in accordance with 317:35-5-42.

(C) The individual can choose to transfer the protected asset without incurring a transfer of assets penalty.

(D) When determining resource eligibility for a couple when one of them enters the nursing home or applies for a HCBS waiver, the LTCP protected asset(s) are disregarded in determining the total amount of the couple's resources.

[OAR Docket #12-600; filed 5-10-12]

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

[OAR Docket #12-597]

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PERMANENT final adoption
RULES:
Subchapter 6. SoonerCare for Pregnant Women and Families with Children
Part 3. Application Procedures
317:35-6-15. [AMENDED]
Subchapter 7. Medical Services
Part 3. Application Procedures
317:35-7-15. [AMENDED]
(Reference APA WF # 11-08)
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ANALYSIS:
Eligibility rules are revised to provide clarification regarding dates of application for SoonerCare services. Current rules are difficult to interpret and, in some instances, obsolete. The revisions will make interpreting rules easier for OHCA staff, contracted agency partners, and applicants to understand when an application is considered received and completed. Rules are further amended to add the Notification of Date of Service feature for hospitals in official agency policy.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 6. SOONERCARE FOR PREGNANT WOMEN AND FAMILIES WITH CHILDREN

PART 3. APPLICATION PROCEDURES

317:35-6-15. Application for SoonerCare for Pregnant Women and Families with Children; forms

(a) **Application.** An application for categorically needy pregnant women and families with children consists of the SoonerCare application. The application form is signed by the individual, parent, spouse, guardian, or someone else acting on the individual's behalf. A categorically needy individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility, Health Department, in the county OKDHS office, or online. A face to face interview is not required. Applications are mailed to the OHCA Eligibility Unit. When an individual indicates a need for SoonerCare, the physician or facility may forward an application to the OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) OKDHS form 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the SoonerCare Application form or OKDHS form 08MA005E constitutes an application for SoonerCare.

(4) If OKDHS form 08MA005E is received and a SoonerCare application cannot be completed, receipt of OKDHS form 08MA005E constitutes an application which must be registered and subsequently denied. The applicant and provider are notified by computer-generated notice.

(5) A hospital providing services may file an electronic Notification of Date of Service (NODOS) form with OHCA up to five days from the date services are rendered. The hospital, applicant, or someone acting on the applicant's behalf has fifteen days from the date the NODOS form was received by OHCA to submit a completed SoonerCare application. Filing a Notification of Date of Service does not guarantee coverage and if a completed application is not submitted within fifteen days, the NODOS is void.

(b) **Date of application.** When an application is made online, the date of application is the date the application is submitted online. ~~When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or OKDHS form 08MA005E is stamped with the date the application was received into the OHCA Eligibility Unit. When a request for SoonerCare is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application to be used. When OKDHS form 08MA005E is received in the OHCA Eligibility Unit prior to the completion of the application form, the date that OKDHS form 08MA005E is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the OHCA Eligibility Unit for SoonerCare eligibility determination. Under this circumstance, the application date is the date the applicant signed the application form for the provider.~~The date of application for a paper application is the date a signed application is received and stamped in by contracted agency partners or OHCA. When a request for SoonerCare is made orally, and that request is followed within 20 days by a signed application, the documented date of the oral request is the date of application. When OKDHS form 08MA005E is received by OKDHS, or received by OHCA and forwarded to OKDHS, the earliest of the date stamps is considered the date of request and should be honored when followed within 20 days by a signed application for SoonerCare.

SUBCHAPTER 7. MEDICAL SERVICES

PART 3. APPLICATION PROCEDURES

317:35-7-15. Application for Medical Services; forms

(a) **Application.** An application for Medical Services consists of the Medical Assistance Application. The application form is signed by the individual, parent, spouse, guardian or someone else acting on the individual's behalf. A individual does not have to have received a medical service nor expect to receive one to be certified for SoonerCare.

(1) An application may be made in a variety of locations, for example, a physician's office, a hospital or other medical facility or in the county OKDHS office. An application may be made online by individuals who are pregnant, have children or are applying for family planning services only. A face to face interview is not required. SoonerCare applications for women who are pregnant, families with children and for family planning services only are mailed to the OHCA Eligibility Unit. Applications for other medical services may be mailed or faxed to the local county OKDHS office. If faxed, it is not necessary to send the original application. When an individual indicates a need for health benefits, the physician or facility may forward an application or 08MA005E to the OKDHS county office of the patient's residence for processing. The physician or facility may forward an application or 08MA005E for individuals who are pregnant, have children or are applying for family planning services only to the OHCA Eligibility Unit for processing. If the applicant is unable to sign the application, someone acting on his/her behalf may sign the application.

(2) OKDHS form 08MA005E, Notification of Needed Medical Services, is required only for preauthorization of

medical services. Although not required, the form may be submitted by the physician or facility as notification for a need for medical service. The form also may be accepted as medical verification of pregnancy.

(3) Receipt of the SoonerCare Application form or OKDHS form 08MA005E constitutes an application for SoonerCare.

(4) If OKDHS form 08MA005E is received and an application cannot be completed, receipt of OKDHS form 08MA005E constitutes an application which must be registered and subsequently denied. The applicant and provider are notified by computer-generated notice.

(5) If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the Medical Assistance Application form.

(b) **Date of application.** When an application is made online, the date of application is the date the application is submitted online. ~~When application is made in the county office, the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application or OKDHS form 08MA005E is stamped into the OHCA Eligibility Unit. When an application is faxed, the application date is the date the fax is received. When a request for SoonerCare is first made by an oral request to the county office, and the application form is signed later, the date of the oral request is entered in "red" on the application form above the date the form is signed. The date of the oral request is the date of application to be used. When OKDHS form 08MA005E is received in the county office or the OHCA Eligibility Unit prior to the completion of the application form, the date that OKDHS form 08MA005E is received is considered as the date of application and must be registered as an application. Certain providers may take applications and then forward them to the OKDHS county office or the OHCA Eligibility Unit for SoonerCare eligibility determination. Under this circumstance, the application date is the date the member signed the application form for the provider.~~The date of application for a paper application is the date a signed application is received and stamped in by contracted agency partners or OHCA. When a request for SoonerCare is made orally, and that request is followed within 20 days by a signed application, the documented date of the oral request is the date of application. When OKDHS form 08MA005E is received by OKDHS, or received by OHCA and forwarded to OKDHS, the earliest of the date stamps is considered the date of request and should be honored when followed within 20 days by a signed application for SoonerCare.

[OAR Docket #12-597; filed 5-10-12]

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

[OAR Docket #12-594]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older In Mental Health Hospitals
Part 1. Services
317:35-9-1. [AMENDED]
317:35-9-5. [AMENDED]
Part 3. Application Procedures
317:35-9-25. [AMENDED]
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]
317:35-9-48.1. [AMENDED]
317:35-9-49. [AMENDED]
Part 11. Payment, Billing, and Other Administrative Procedures
317:35-9-97. [AMENDED]
Subchapter 10. Other Eligibility Factors for Families With Children And Pregnant Women
Part 5. Income
317:35-10-38. [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-1. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-3. [AMENDED]
317:35-19-8. [AMENDED]
317:35-19-9. [AMENDED]
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ANALYSIS:
OHCA rules are revised to change language in policy that references "mental retardation" to "intellectual disabilities". Revisions are necessary to comply with Public Law 111-256 (Rosa's Law) that replaces the term mental retardation with intellectual disability, in federal education, health and labor laws.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 1. SERVICES

317:35-9-1. Overview of long-term medical care services; relationship to QMB, SLMB, and other Medicaid services eligibility, and spenddown calculation

(a) **Long Term Medical Care Services.** Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for the mentally retarded (refer to this subchapter), persons age 65 years or older in mental health hospitals (refer to this subchapter), Home and Community Based Waiver Services for the ~~Mentally Retarded~~Intellectually Disabled (refer to this subchapter), and Home and Community Based Waiver Services for frail elderly and a targeted group of adults with physical disabilities age 21 and over who have not been determined to have a developmental disability, ~~mental retardation~~an intellectual disability or a related condition (refer to OAC 317:35-17). Personal Care provides services in the own home for categorically needy individuals (refer to OAC 317:35-15). Any time an individual is certified as eligible for Medicaid coverage of long-term care, the individual is also eligible for other Medicaid services. Another application or additional spenddown computation is not required. Spenddown is applied to the first long-term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required. Any spenddown computed for long-term care is not applicable to QMB or SLMB coverage.

(b) **Medicaid recovery.** The State of Oklahoma operates a Medicaid Recovery program to recover for services identified in OAC 317:35-9-15. Recovery can be accomplished in two ways: liens against real property or claims made against estates.

317:35-9-5. Home and Community - Based Services (HCBS) Waivers for persons with intellectual disabilities ~~(mental retardation)~~ or certain persons with related conditions

(a) Home and Community Based Services (HCBS) Waivers for persons with intellectual disabilities ~~(mental retardation)~~ or certain persons with related conditions are operated by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) per OAC 317:40-1-1. Oklahoma's Medicaid agency, the Oklahoma Health Care Authority (OHCA), provides oversight of Waiver operation. HCBS Waivers allow the OHCA to offer certain home and community based services to categorically needy members who, without such services, would be eligible for care in an Intermediate Care Facility for persons with Mental Retardation (ICF/MR).

(b) Members receiving HCBS Waiver services per OAC 317:40-1-1 are subject to HCBS Waiver service conditions (1)-(11) of this subsection. The rules in this subsection shall not be construed as a limitation of the rights of class members set forth in the Second Amended Permanent Injunction in Homeward Bound vs. The Hissom Memorial Center.

(1) HCBS Waiver services are subject to annual appropriations by the Oklahoma Legislature.

(2) DDSD must limit the utilization of the HCBS Waiver services based on:

(A) the federally-approved member capacity for the individual HCBS Waivers; and

(B) the cost effectiveness of the individual HCBS Waivers as determined according to federal requirements; and

(3) DDSD must limit enrollment when utilization of services under the HCBS Waiver programs is projected to exceed the spending authority.

(4) Members receiving Waiver services must have full access to State plan services for which they are eligible including Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services when children participate in a Waiver.

(5) A member's room and board expenses may not be paid through a Waiver. Room and board expenses must be met from member resources or through other sources.

(6) A member must require at least one Waiver service per month or monthly case management monitoring in order to function in the community.

(7) Waiver services required by a member must be documented in advance of service delivery in a written plan of care.

(8) Members exercise freedom of choice by choosing Waiver services instead of institutional services.

(9) Members have the right to freely select from among any willing and qualified provider of Waiver services.

(10) The average costs of providing Waiver and non-Waiver SoonerCare services must be no more costly than the average costs of furnishing institutional (and other SoonerCare state plan) services to persons who require the same level of care.

(11) Members approved for services provided in a specific Waiver must be afforded access to all necessary services offered in the specific Waiver if the member requires the service.

PART 3. APPLICATION PROCEDURES

317:35-9-25. Application for ICF/MR, ~~HCBW/MR~~HCBW/ID, and persons aged 65 or over in mental health hospitals.

(a) **Application procedures for long-term medical care.** An application for these types of services consists of the Medical Assistance Application. The Medical Assistance Application is signed by the patient, parent, spouse, guardian or someone else acting on the patient's behalf.

(1) All conditions of eligibility must be verified and documented in the case record. When current information already available in the local office establishes eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(2) At the request of an individual in an ICF/MR or receiving Home and Community Based Waiver Services for the ~~Mentally Retarded~~Intellectually Disabled or the community spouse, if application for Medicaid is not being made, an assessment of the resources available to each spouse is made by use of DHS Form MA-11, Assessment of Assets. Documentation of resources must be provided by the individual and/or spouse. This assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of Medicaid eligibility is made. A copy of Form MA-11 is provided to each spouse for planning in regard to future eligibility. A copy is retained in the county office in case of subsequent application.

(3) If assessment by Form MA-11 was not done at the time of entry into the ICF/MR or ~~HCBW/MR~~HCBW/ID services, assessment by use of Form MA-11 must be done at the time of application for Medicaid. The spousal share of resources is determined in either instance for the month of entry into the ICF/MR or ~~HCBW/MR~~HCBW/ID services. If the individual applies for Medicaid at the time of entry into the ICF/MR or ~~HCBW/MR~~ HCBW/ID services, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the Medicaid application form and computed using DHS Form MA-12, Title XIX Worksheet.

(b) **Date of application.** When application is made in the county office the date of application is the date the applicant or someone acting on his/her behalf signs the application form. When the application is initiated outside the county office, the date of application is the date the application is stamped into the county office. When a request for Medicaid is first made by an oral request, and the application form is signed later, the date of the oral request is entered in "red" above the date the form is signed. The date of the oral request is the date of application.

PART 5. DETERMINATION OF MEDICAL ELIGIBILITY FOR ICF/MR, HCBW/~~MR~~ID, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

317:35-9-45. Determination of medical eligibility for care in a private Intermediate Care Facility for Persons with Mental Retardation

(a) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/MR care is based on level of care requirements per OAC 317:30-5-122. Pre-approval is not necessary for individuals with a severe or profound intellectual disability ~~(mental retardation)~~. Pre-approval is made by Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU) analysts.

(b) **Application for ICF/MR services.** Within 30 calendar days after services begin, the facility must submit:

(1) the original of the ICF/MR Level of Care Assessment form (LTC-300) to LOCEU. Required attachments include:

(A) Current (within 90 days of requested approval date) medical information signed by a physician.

(B) A current (within 12 months of requested approval date) psychological evaluation by a licensed Psychologist or State staff supervised by a licensed Psychologist. The evaluation must include intelligence testing that yields a full-scale intelligence quotient, a full-scale functional or adaptive assessment, as well as the age of onset.

(C) A copy of the pertinent section of the Individual Plan or other appropriate documentation relative to the ICF/MR admission and the need for ICF/MR level of care.

(D) A statement that the member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal).

(2) If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on an electronic medical case list known as MEDATS. Pre-approval is not needed for individuals with a severe or profound intellectual disability ~~(mental retardation)~~.

(c) **Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances LOCEU will render a decision on categorical relationship using the same definition as used by the with SSA. A follow-up is required by the OKDHS social worker with the SSA to be sure that their disability decision agrees with the decision of LOCEU.

(d) **Medical eligibility for ICF/MR services.**

(1) Individuals must require active treatment per 42 CFR 483.440.

(2) Individuals must have a diagnosis of intellectual disability ~~(mental retardation)~~ or a related condition based on level of care requirements per OAC 317:30-5-122 and results of a current comprehensive psychological evaluation by a licensed Psychologist or State staff supervised by a licensed Psychologist.

(A) Per the Diagnostic and Statistical Manual of Mental Disorders, intellectual disability ~~(mental retardation)~~ is a condition characterized by a significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before 18 years of age.

(B) Per 42 CFR 435.1010, persons with related conditions means individuals who have a severe, chronic disability that meets the following conditions:

(i) It is attributable to cerebral palsy or epilepsy; or

(ii) it is attributable to any other condition, other than mental illness, found to be closely related to intellectual disability ~~(mental retardation)~~ because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability ~~(mental retardation)~~ and requires treatment or services similar to those required for these persons.

(iii) It is manifested before the person reaches age 22.

(iv) It is likely to continue indefinitely.

(v) It results in substantial functional limitations in three or more areas of major life activity per OAC 317:30-5-122.

(C) Conditions closely related to intellectual disability ~~(mental retardation)~~ include, but are not limited to the following:

(i) autism or autistic disorder, childhood disintegrative disorder, Rett syndrome and pervasive developmental disorder, not otherwise specified (only if "typical autism");

(ii) severe brain injury (acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis);

(iii) fetal alcohol syndrome;

(iv) chromosomal disorders (Down syndrome, fragile x syndrome, Prader-Willi syndrome);and

(v) other genetic disorders (Williams syndrome, spina bifida, phenylketonuria).

(D) The following diagnoses do not qualify as conditions related to intellectual disability ~~(mental retardation)~~. Nevertheless, a person with any of these conditions is not disqualified if there is a simultaneous occurrence of a qualifying condition:

(i) learning disability;

(ii) behavior or conduct disorders;

(iii) substance abuse;

(iv) hearing impairment or vision impairment;

(v) mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;

(vi) borderline intellectual functioning, developmental disability that does not result in an intellectual impairment, developmental delay or "at risk" designations;

(vii) physical problems (such as multiple sclerosis, muscular dystrophy, spinal cord injuries and amputations);

(viii) medical health problems (such as cancer, acquired immune deficiency syndrome and terminal illnesses);

(ix) milder autism spectrum disorders (such as Asperger's disorder and pervasive developmental disorder not otherwise specified if not "atypical autism");

(x) neurological problems not associated with intellectual deficits (such as Tourette's syndrome, fetal alcohol effects and non-verbal learning disability);or

(xi) mild traumatic brain injury (such as minimal brain injury and post-concussion syndrome).

317:35-9-48.1. Determining ICF/MR institutional level of care for TEFRA children

In order to determine level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for at least 30 days.

(A) Applicants under age three must:

(i) have a diagnosis of a developmental disability; and

(ii) have been evaluated by the SoonerStart Early Intervention Program and found to have severe dysfunctional deficiencies with findings of at least two standard deviations in at least two developmental areas.

(B) Applicants age three years and older must:

(i) have a diagnosis of ~~mental retardation~~an intellectual disability or a developmental disability; and

(ii) have received a psychological evaluation by a licensed psychologist or school psychologist certified by the Oklahoma Department of Education (ODE) within the last 12 months. The evaluation must include intelligence testing that yields a full-scale intelligence quotient, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ICF/MR level of institutional care requires an IQ of 75 or less, and a full-scale functional assessment (Vineland or Battelle) indicating a functional age composite that does not exceed 50% of the child's chronological age. In no case shall eligibility be granted for a functional age greater than eight years.

(2) Psychological evaluations required for children who are approved for TEFRA under ICF/MR level of care. Children under age six will be required to undergo a full psychological evaluation, including both intelligence testing and adaptive/functional assessment, by a licensed psychologist or school psychologist certified by the ODE, at age three and again at age six to ascertain continued eligibility for TEFRA under the ICF/MR level of institutional care. The psychological evaluation must

be completed and submitted to the LOCEU no later than 90 days following the child's third and sixth birthday.

317:35-9-49. Determination of medical eligibility for Home and Community Based Waiver Services for the ~~Mentally Retarded~~Intellectually Disabled

Determinations of medical eligibility for Home and Community Based Waiver Services for the ~~Mentally Retarded (HCBW/MR)~~Intellectually Disabled (HCBW/ID) is made through referral to the DHS DDSD case manager.

(1) **Referral.** If the county receives an application, Form K-13 is forwarded to the DDSD case manager, who is responsible for securing a ~~HCBW/MR~~HCBW/ID medical determination and a disability decision, if needed.

(2) **Initial request.** If the initial request is through DDSD, Form K-13 is forwarded to the county for completing the application process.

(3) **Plan of care packet.** The DDSD case manager submits the necessary information to LOCEU for medical determination and a disability decision if needed.

(4) **County notification.** LOCEU notifies the county and DDSD case manager of determination by updating the MEDATS file.

(5) **Procedures for an individual returning home.** If referral is from a public ICF/MR for an individual returning to the home, the DDSD case manager forwards to the worker the medical eligibility determination for ~~HCBW/MR~~HCBW/ID along with the latest application form and redetermination of eligibility form used to determine eligibility for institutional care. A new application will not be required. A case number will be assigned retaining the application date, certification date and redetermination of eligibility date.

(6) **Determination of continued eligibility for ~~HCBW/MR~~HCBW/ID.** The case manager is responsible for assuring that the individual's needs are re-evaluated and that recertification is established annually. Determination of continued medical eligibility is not necessary unless there is a significant change in the client's condition. The DDSD cases manager will notify LOCEU if this is the case.

PART 11. PAYMENT, BILLING, AND OTHER ADMINISTRATIVE PROCEDURES

317:35-9-97. Payment for Home and Community Based Waiver services for the ~~Mentally Retarded (HCBW/MR)~~Intellectually Disabled (HCBW/ID)

Payment is made to ~~HCBW/MR~~HCBW/ID providers who have been certified as eligible to provide such services by the DHS Developmental Disabilities Services Division (DDSD). Certification is made after the provider has completed required training or meets the State licensing requirements for that medical discipline. Each provider must enter into a contract to provide ~~HCBW/MR~~HCBW/ID services. Payment is made on a procedure-based reimbursement methodology for each service. All services must be preauthorized before payment can be made.

SUBCHAPTER 10. OTHER ELIGIBILITY FACTORS FOR FAMILIES WITH CHILDREN AND PREGNANT WOMEN

PART 5. INCOME

317:35-10-38. Temporary absence from the home.

An individual who is temporarily absent from the home for the purpose of receiving training or education for employment, certain medical services, etc., may be considered part of the benefit group.

(1) Individuals temporarily absent from the home, receiving training or education for employment are considered part of the benefit group during the period of time the training or educational activities are taking place.

(2) Children temporarily absent from the home to attend boarding school are considered part of the benefit group during the school term.

(3) Individuals temporarily absent from the home because of entrance into a private facility for counseling, rehabilitation, behavioral problems or special training, etc., are considered part of the benefit group. If care is projected for a period exceeding 90 days, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the individual cannot be included in the benefit group.

(4) Individuals temporarily absent from the home for medical services, other than institutionalization for treatment of mental illness, ~~mental retardation~~intellectual disability, or tuberculosis, are considered part of the benefit group for up to six months. Six-month extensions may be allowed when the worker's verification indicates the individual may return to the home within the next six months.

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-1. Overview of long-term medical care services; relationship to QMBP, SLMB and other SoonerCare services and eligibility

Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for the mentally retarded (refer to OAC 317:35-9), persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9), Home and Community Based Waiver Services for the ~~Mentally Retarded~~ Intellectually Disabled (refer to OAC 317:35-9), Home and

Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17), and Personal Care services (refer to this subchapter). Personal Care provides services in the member's own home. Any time an individual is certified as eligible for SoonerCare coverage of long-term care, the individual is also eligible for other SoonerCare services. Another application is not required. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required.

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-3. Services in a Nursing Facility (NF)

(a) Nursing facility services are those services furnished pursuant to a physician's orders which require the skills of technical or professional personnel, e.g., registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech pathologists or audiologists. The care is provided by nursing facilities licensed under state law to provide, on a regular basis, health related care and services to individuals who do not require hospitalization but whose physical or mental condition requires care and services above the level of room and board which can be made available to them only through a nursing facility. To be eligible for nursing facility services, the UCAT demonstrates the individual must:

(1) require a treatment plan involving the planning and administration of services which require skills of licensed technical or professional personnel that are provided directly or under the supervision of such personnel and are prescribed by the physician;

(2) have a physical impairment or combination of physical and mental impairments;

(3) require professional nursing supervision (medication, hygiene and dietary assistance);

(4) lack the ability to care for self or communicate needs to others; and

(5) require medical care and treatment in a nursing facility to minimize physical health regression and deterioration. A physician's order and results from a standardized assessment which evaluates type and degree of disability and need for treatment must support the individual's need for NF level of care. Only standardized assessments approved by the OHCA and administered in accordance with Medicaid approved procedures shall be used to make the NF level of care determination.

(b) If the individual experiences mental illness or ~~mental retardation~~an intellectual disability or a related condition, payment cannot be made for services in a nursing facility unless the individual has been assessed through the PASRR process and the appropriate MR or MI authority has determined that nursing facility services are required. If it is determined that the client also requires specialized services, the state must provide or arrange for the provision of such services. These determinations must be made prior to the patient's admission to the nursing facility. Payment cannot be made for an individual who is in imminent danger of harm to self or others.

(c) Payment is made to licensed nursing facilities that have agreements with the OHCA.

(d) Nursing facility clients are eligible for ADvantage waiver services and must be informed by the LTC nurse of the ADvantage waiver and given the option to apply for ADvantage services.

317:35-19-8. Pre-admission screening and resident review

(a) Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) of individuals with mental illness and ~~mental retardation~~intellectual disabilities. PASRR applies to the screening or reviewing of all individuals for mental illness or ~~mental retardation~~intellectual disability or related conditions who apply to or reside in Medicaid certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The NF must independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. If an individual is admitted to the NF inappropriately, the NF is subject to recoupment of Medicaid funds and penalties imposed by CMS. Federal financial participation (FFP) may not be paid until results of any needed PASRR Level II evaluations are received. PASRR is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR).

(b) For Medicaid applicants, medical and financial eligibility determinations are also required.

317:35-19-9. PASRR screening process

(a) **Level I screen for PASRR.**

(1) OHCA Form LTC-300R, Nursing Facility Level of Care Assessment, must be completed by an authorized NF official or designee. An authorized NF official or designee must consist of one of the following:

(A) The nursing facility administrator or co-administrator;

(B) A licensed nurse, social service director, or social worker from the nursing facility; or

(C) A licensed nurse, social service director, or social worker from the hospital.

(2) Prior to admission, the authorized NF official must evaluate the properly completed OHCA Form LTC-300R and the Minimum Data Set (MDS), if available, as well as all other readily available medical and social information, to determine if there currently exists any indication of mental illness (MI), ~~mental retardation (MR)~~intellectual disability (ID), or other related condition, or if such condition existed in the applicant's past history. Form LTC-300R constitutes the Level I PASRR Screen and is

utilized in determining whether or not a Level II is necessary prior to allowing the patient to be admitted.

(3) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from Form LTC-300R, Section E, will require the nursing facility to contact the Level of Care Evaluation Unit (LOCEU) for a consultation to determine if a Level II assessment is needed. The NF is also responsible for consulting with the LOCEU regarding any ~~MI/MR~~MI/ID /related condition information that becomes known either from completion of the MDS or throughout the resident's stay. The original Form LTC-300R must be submitted to the LOCEU by mail within 10 days of the resident's admission. SoonerCare payment may not be made for a resident whose LTC-300R requirements have not been satisfied in a timely manner.

(4) Upon receipt and review of the PASRR eligibility information packet, the LOCEU may, in coordination with the Oklahoma Department of Human Services (OKHDS) area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II assessment is not required, as determined by the LOCEU, the area nurse, or nurse designee, documents this and continues with the process of determining medical eligibility. If a Level II is required, a medical decision is not made until the area nurse is notified of the outcome of the Level II assessment. The results of the Level II assessment are considered in the medical eligibility decision. The area nurse, or nurse designee, makes the medical eligibility decision within ten working days of receipt of the medical information when a Level II assessment is not required. If a Level II assessment is required, the area nurse makes the decision within five working days if appropriate.

(b) **Pre-admission Level II assessment for PASRR.** The authorized official is responsible for consulting with the OHCA LOCEU in determining whether a Level II assessment is necessary. The decision for Level II assessment is made by the LOCEU.

(1) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR assessment:

(A) The patient has no current indication of mental illness or ~~mental retardation~~an intellectual disability or other related condition and there is no history of such condition in the patient's past;

(B) The patient does not have a diagnosis of ~~mental retardation~~an intellectual disability or related condition; or

(C) The patient has indications of mental illness or ~~mental retardation~~an intellectual disability or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (Exempted Hospital Discharge). If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all of the following three conditions are met:

(i) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(ii) The individual must require NF services for the condition for which he/she received care in the hospital; and

(iii) The attending physician must certify before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The nursing facility will be required to furnish documentation to the OHCA upon request.

(2) If the patient has current indications of mental illness or ~~mental retardation~~an intellectual disability or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted to determine if a Level II PASRR assessment must be performed. Results of any Level II PASRR assessment ordered must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

(3) The OHCA Level of Care Evaluation Unit authorizes Advance Group Determinations for the MI and MR Authorities in the categories listed in the following categories listed in (A) through (C) of this paragraph. Preliminary screening by the LOCEU should indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

(A) **Provisional admission in cases of delirium.** Any person with mental illness, ~~mental retardation~~an intellectual disability or related condition who is not a danger to self and/or others, may be admitted to a Medicaid certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(i) A Level II evaluation is completed immediately after the delirium clears. LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(ii) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(B) **Provisional admission in emergency situations.** Any person with a mental illness, ~~mental retardation~~an intellectual disability or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility for a period not to exceed seven days pending further

assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. LOCEU must be provided with written documentation from Adult Protective Services or the nursing facility which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(C) **Respite care admission.** Any person with mental illness, ~~mental retardation~~ an intellectual disability or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(i) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

(ii) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(c) **PASRR Level II resident review.** The resident review is used primarily as a follow-up to the pre-admission assessment.

(1) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as ~~MR~~intellectually disabled or MI. A new condition of ~~MR~~ intellectual disabilities or MI must be referred to LOCEU by the NF for determination of the need for the Level II. The facility's failure to refer such individuals for a Level II assessment may result in recoupment of funds and/or penalties from CMS.

(2) A Level II resident review may be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness with no primary diagnosis of dementia on his or her pre-admission Level II to determine whether, because of the resident's physical and mental condition, the resident requires specialized services.

(3) A Level II resident review may be conducted for each resident of a nursing facility who has mental illness or ~~mental retardation~~an intellectual disability or other related condition when there is a significant change in the resident's mental condition. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to have a consultation with the LOCEU concerning the need to conduct a resident review.

(4) Individuals who were determined to have a serious mental illness (as defined by CMS) on their last PASRR Level II evaluation will receive a resident review at least within one year of the previous evaluation.

(d) **Results of pre-admission Level II assessment and Resident Review.** Through contractual arrangements between the Oklahoma Health Care Authority and the Mental Illness/Mental Retardation Authorities/Community Mental Health Centers, individualized assessments are conducted and findings presented in written evaluative reports. The reports recommend if nursing facility services are needed, if specialized services or less than specialized services are needed, and if the individual meets the federal PASRR definition of mental illness or ~~mental retardation~~intellectual disability or related conditions. Evaluative reports are delivered to the OHCA's LOCEU within federal regulatory and state contractual timelines to allow the LOCEU to process formal, written notification to patient, guardian, NF and significant others.

(e) **Evaluation of pre-admission Level II or Resident Review assessment to determine Medicaid medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the area nurse (or nurse designee) unless the individual has ~~mental retardation~~an intellectual disability or related condition or a serious mental illness (as defined by CMS). The procedures for obtaining and submitting information required for a decision are outlined in this subsection. When an active long term care patient enters the facility and nursing care is being requested:

(1) The pre-admission screening process must be performed and must allow the patient to be admitted.

(2) The facility will notify the local county office by the OKDHS Form 08MA083E, Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice and Form 08MA084E, Management of Recipient's Funds, of the member's admission.

(3) The local county office will send the NF the OKDHS Form 08MA038E, Notice Regarding Financial Eligibility, indicating actions that are needed or have been taken regarding the member.

[OAR Docket #12-594; filed 5-10-12]

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

[OAR Docket #12-620]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 13. Member Rights and Responsibilities
317:35-13-7. [AMENDED]
(Reference APA WF # 11-42)

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

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ANALYSIS:
Eligibility policy is revised to address sanctioning of members who abuse SoonerCare benefits. For members who OHCA has determined to have abused their benefits, sanctions are put in place such that on the first violation, the member's eligibility will be suspended for up to six months; for the second violation, the member's eligibility will be suspend for up to twelve months; and for the third violation, the member's eligibility will be suspended indefinitely. All sanctions, including the length of the penalty period, are subject to administrative due process.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 13. MEMBER RIGHTS AND RESPONSIBILITIES

317:35-13-7. Program Abuse and Administrative Sanctions

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

(1) "Abuse" means ~~recipient~~member actions that defraud the Oklahoma Health Care Authority (OHCA), cause unnecessary medical expenses to the program or over-utilize services provided by the OHCA. It shall also mean causing unnecessary or excessive claims to be submitted to the OHCA.

(2) "Conviction" or "Convicted" means a judgment of conviction has been entered by a Federal, State or local court, regardless of whether an appeal from that judgment is pending.

(3) "Exclusion" means not being able to be certified for Medicaid benefits under the State Plan or Waivered services in Oklahoma.

(4) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

(5) "Knowingly" means that a person, with respect to information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(6) "Medical Services Providers" means:

(A) "Practitioner" means a physician or other individual licensed under State law to practice his or her profession or a physician who meets all requirements for employment by the Federal Government as a physician and is employed by the Federal Government in an IHS facility or affiliated with a 638 Tribal facility.

(B) "Supplier" means an individual or entity, other than a provider or practitioner, who furnishes health care services under Medicaid or other medical services programs administered by the OHCA.

(C) "Provider" means:

(i) a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or a hospice that has in effect an agreement to participate in Medicaid, or any other medical services program administered by the OHCA, or

(ii) a clinic, a rehabilitation agency, or a public health agency that has a similar agreement.

(D) "Laboratories" means any laboratory or place equipped for experimental study in science or for testing or analysis which has an agreement with the OHCA to receive Medicaid monies.

(E) "Pharmacy" means any pharmacy or place where medicines are compounded or dispensed or any pharmacist who has an agreement with OHCA to receive Medicaid monies for the dispensing of drugs.

(F) "Any other provider" means any provider who has an agreement with OHCA to deliver health services, medicines, or medical services for the receipt of Medicaid monies.

(7) "OIG" means the Office of Inspector General of the Department of Health and Human Services.

(8) ~~"Recipient"~~"Member" means a beneficiary, patient or person served by the OHCA.

(9) "Sanctions" means any administrative decision by OHCA to suspend or exclude a ~~recipient~~member from the ability to be certified for medical assistance. A sanction may include a decision to use the remedy provided in

OAC 317:30-3-14(b) or to require payment by the ~~recipient~~member of the service.

(10) "Suspension" means an administrative action to suspend temporarily the certification of a case for medical assistance.

(11) "Willfully" means proceeding from a conscious motion of the will; voluntary, intending the result which comes to pass; intentional.

(b) **Basis for sanctions.**

(1) The OHCA may sanction a ~~recipient~~member who has or has had a certified medical assistance case with OHCA for the following reasons:

(A) Knowingly or willfully made, or causing to be made, any false statement or misrepresentation of material fact to get a case certified or causing services to be rendered to the ~~recipient~~member;

(B) Caused or ordered services under Medicaid that are substantially in excess of the ~~recipient's~~member's needs or that fail to meet professionally recognized standards for health care;

(C) Submitted or caused to be submitted to the Medicaid program, bills or requests for payment containing charges or costs that are substantially in excess of customary charges or costs; or

(D) Threatened harm to medical providers or state officials.

(2) The agency may base its determination that services are excessive or unnecessary based upon reports, including sanction reports, from any of the following sources:

(A) The PRO for the area served by the provider or the PRO contracted by OHCA;

(B) State or local law enforcement agencies and licensing or certification authorities;

(C) Peer review committees of fiscal agents or contractors;

(D) State or local professional societies;

(E) Surveillance and Utilization Review Section Reports done by OHCA;

(F) Medicaid Fraud Control Unit;

(G) Other sources, including internal investigations, deemed appropriate by the Medicaid agency or the OIG.

(3) OHCA must suspend from the Medicaid program any ~~recipient~~member who has been suspended from participation in Medicare or Medicaid due to a conviction of a program related crime. This suspension must be at a minimum, the same period as the Medicare suspension.

(c) **Procedures for imposing sanctions.**

(1) Notice of proposed administrative sanction.

(A) If the OHCA proposes to sanction, it will send the ~~recipient~~member a written notice stating:

(i) the reasons for the proposed sanction;

(ii) the date upon which the sanction will be effective;

(iii) the result of the sanction should it be imposed; and

(iv) a statement that the ~~recipient~~member has a right to an evidentiary hearing prior to the imposition of the sanction.

(B) A copy of this section of the rules will be attached to the letter of proposed action.

(2) Notice of sanction.

(A) After an evidentiary hearing is conducted under OAC 317:2-1-2, the Agency will make a final administrative decision regarding the decision to sanction.

(B) Based upon its final decision, the Agency shall send a notice to the ~~recipient~~ member that provides:

(i) the reasons for the decision;

(ii) the effective date of the sanction;

(iii) the effect of the sanction on the party's participation in the Medicaid program;

(iv) the ~~recipient's~~member's right to request a reconsideration of the Agency's final decision;

(v) the earliest date in which the Agency will accept a request for reinstatement;

(vi) the requirements and procedures for reinstatement; and

(vii) instructions on how to ask for reconsideration.

(d) **Effect of sanction.** OHCA will advise its eligibility agent of the closure or suspension of the case and when the ~~recipient~~member can be recertified. The sanctions are as follows:

(1) For the first violation in which the agency finds a member has abused SoonerCare benefits or SoonerCare waiver benefits, the member's eligibility may be suspended for a period of up to 6 months.

(2) For the second violation in which the agency finds a member has abused SoonerCare benefits or SoonerCare waiver benefits, the member's eligibility may be suspended for a period of up to 12 months.

(3) For the third violation in which the agency finds a member has abused SoonerCare benefits or SoonerCare waiver benefits, the member's eligibility may be suspended indefinitely.

(4) All members' sanctions, including the length of the penalty period, are subject to administrative due process as described in this section.

(e) **Criteria for reinstatement.**

(1) Upon the request for reinstatement made by the ~~recipient~~member, OHCA may consider the following factors to reinstate the ~~recipient~~member;

(A) The number and nature of the program violations and other related offenses.

(B) The nature and extent of any adverse impact the violations have had on providers or other ~~recipients~~members;

(C) The amount of any damages;

(D) Any mitigating circumstances;

(E) Other facts bearing on the nature and seriousness of the program violations and related offenses;

(F) Convictions in a federal, state, or local court of other offenses related to participation in the Medicare

or Medicaid program which were not considered during the development of the exclusion; and

(G) Whether the state or local licensing authorities have taken any adverse action against the party for offenses related to participation in the Medicare or Medicaid program which were not considered during the development of the exclusion.

(2) Regardless of the applicability of one or many of the factors in paragraph (1) of this subsection, reinstatement shall not be granted unless it is reasonably certain that the violation(s) that led to the exclusion will not be repeated.

[OAR Docket #12-620; filed 5-10-12]

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

[OAR Docket #12-618]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 17. ADvantage Waiver Services
317:35-17-1. [AMENDED]
317:35-17-2. [AMENDED]
317:35-17-3. [AMENDED]
317:35-17-4. [AMENDED]
317:35-17-5. [AMENDED]
317:35-17-11. [AMENDED]
317:35-17-12. [AMENDED]
317:35-17-14. [AMENDED]
317:35-17-15. [AMENDED]
317:35-17-16. [AMENDED]
317:35-17-17. [REVOKED]
317:35-17-18. [AMENDED]
317:35-17-19. [AMENDED]
317:35-17-21.1. [AMENDED]
317:35-17-24. [AMENDED]
(Reference APA WF # 11-39B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)
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N/A
ANALYSIS:
OHCA rules for the ADvantage Waiver are revised to add language clarifying member reauthorization, recertification and redetermination, clarification regarding the member's level of need in order to be eligible for waiver services, clarification about the types of living arrangements allowable for ADvantage members, and clarification regarding the member's health, safety and welfare. Additionally, changes include the addition of language regarding plan of care documentation when more than one member of a household receives waiver services, clarification regarding the use of family members as paid providers, clarification of conditions requiring a member's service plan goals, the removal of policy allowing a financial eligibility assessment for individuals not applying for services, removal of policy regarding the expedited eligibility determination process (SPEED) and other minor revisions.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-1. Overview of long-term medical care services; relationship to QMBP, SLMB, and other Medicaid services eligibility

(a) Long-term medical care for the categorically needy includes:

(1) care in a nursing facility (refer to OAC 317:35-19);

(2) care in a public or private intermediate care facility for the ~~mentally retarded~~intellectually disabled(refer to OAC 317:35-9);

(3) care of persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9);

(4) Home and Community Based Services Waivers for ~~the Mentally Retarded~~persons with intellectual disabilities (refer to OAC 317:35-9);

(5) Personal Care services (refer to OAC 317:35-15); and

(6) the Home and Community Based Services Waiver for frail elderly, and a targeted group of adults with physical disabilities age 21 and over who do not have ~~mental retardation~~ intellectual disability or a cognitive impairment (ADvantage Waiver).

(b) Any time an individual is certified as eligible for SoonerCare coverage of long-term care, the individual is also eligible for other SoonerCare services. ADvantage Waiver members do not have a copayment for ADvantage services except for prescription drugs. For members residing in an ADvantage

Assisted Living Center, any income beyond 150% of the federal benefit rate is available to defray the cost of the Assisted Living services received. The member is responsible for payment to the Assisted Living Services Center provider for days of service from the first day of each full month in which services have been received until the vendor pay obligation is met. Any time an individual is aged, blind or disabled ~~individual~~and is determined eligible for long-term care, a separate eligibility determination must be made for Qualified Medicare Beneficiary Plus (QMBP) or Specified Low-Income Medicare Beneficiary (SLMB) benefits. An ADvantage program member may reside in a licensed assisted living facility only if the assisted living center is a certified ADvantage Assisted Living Services provider from whom the member is receiving ADvantage Assisted Living services.

317:35-17-2. Level of care medical eligibility determination

The OKDHS area nurse, or nurse designee, determines medical eligibility for ADvantage program services based on the ~~Long Term Care (LTC) nurse's~~ Uniform Comprehensive Assessment Tool (UCAT) III assessment and the determination that the ~~client~~member has unmet care needs that require ADvantage or NF services to assure ~~client~~member health and safety. ADvantage services are initiated to support the informal care that is being provided in the ~~client's~~member's home, or, that based on the UCAT, can be expected to be provided in the ~~client's~~members's home upon discharge of the ~~client~~member from a NF or hospital. These services are not intended to take the place of regular care and general maintenance tasks or meal preparation typically shared or done for one another by spouses or other adults and who live in the same household. Additionally, services are not furnished if they principally benefit the family unit~~provided by family members and/or by significant others~~. When there is an informal (not paid) system of care available in the home, ADvantage service provision will supplement the system within the limitations of ADvantage Program policy to enable the family and/or significant others to continue caregiving over extended periods. When the ADvantage personal care attendant and member live within the same household, personal care will only be approved by agreement of the interdisciplinary service planning team and OKDHS AA approval that the personal care tasks are consistent with plan goals and have beneficial outcomes for the member.

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

(A) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the ~~client's~~member's ability to perform self-care tasks essential for sustaining health and safety such as:

(i) bathing,
(ii) eating,
(iii) dressing,
(iv) grooming,
(v) transferring (includes getting in and out of a tub, bed to chair, etc.),
(vi) mobility,
(vii) toileting, and
(viii) bowel/bladder control.

(B) **"ADLs score in high risk range"** means the ~~client's~~member's total weighted UCAT ADL score is 10 or more which indicates the ~~client~~member needs some help with 5 ADLs or that the ~~client~~member cannot do 3 ADLs at all plus the ~~client~~ member needs some help with 1 other ADL.

(C) **"ADLs score at the high end of the moderate risk range"** means ~~client's~~ member's total weighted UCAT ADL score is 8 or 9 which indicates the ~~client~~ member needs help with 4 ADLs or the ~~client~~member cannot do 3 ADLs at all.

~~(D) **"CHC"** means Comprehensive Home Care.~~

(~~E~~D) **"Client Support high risk"** means ~~client's~~member's UCAT Client Support score is 25 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, very little or no support is available from informal and formal sources and the overall total support is entirely inadequate to meet a high degree of medically complex needs. Functional capacity is so limited as to require full time assistance and the stability of the care system is likely to fail. The ~~client~~member requires additional care that is not available through Medicare, Veterans Administration, or other Federal entitlement programs to prevent an imminent risk of life threatening health deterioration or institutional placement.

(E) **"Client Support low risk"** means member's UCAT Client Support score is 5 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, support from informal and formal sources is nearly sufficient/stable with minimal or few needs for formal services (i.e. some housekeeping only). The member/family/ informal supports are meeting most needs typically expected for family/household members to share or do for one another, i.e. general household maintenance. There is little risk of institutional placement even with a loss of current supports.

(F) **"Client Support moderate risk"** means ~~client's~~member's UCAT Client Support score is 15 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, ADvantage and/or State Plan Personal Care services, support from informal and formal sources is available, but overall, it is inadequate, changing, fragile or otherwise problematic and the ~~client~~member requires additional care that usually includes personal care assistance with one or more activity of daily living tasks and is not available through Medicare,

Veterans Administration, or other federal entitlement programs. Support provided by informal caregivers is of questionable reliability due to one or more of the following:

(i) Care/support is required continuously with no relief or backup available, or

(ii) Informal support lacks continuity due to conflicting responsibilities such as job and/or child care, or

(iii) Care/support is provided by persons with advanced age and/or disability, and

(iv) Institutional placement can reasonably be expected with any loss of existing support.

(G) **"Cognitive Impairment"** means that the ~~person~~individual, as determined by the clinical judgment of the ~~LTC~~OKDHS Nurse or the AA, does not have the capability to think, reason, remember or learn skills required for self-care, communicating needs, directing care givers and/or using appropriate judgment for maintenance of their own health or safety. The clinical judgment of cognitive impairment is based on MSQ performance in combination with a more general evaluation of cognitive function from interaction with the ~~person~~individual during the UCAT assessment.

(H) **"Developmental Disability"** means a severe, chronic disability of an individual that:

(i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) is manifested before the individual attains age 22;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in three or more of the following areas of major life activity:

(I) self-care;

(II) receptive and expressive language;

(III) learning;

(IV) mobility;

(V) self-direction;

(VI) capacity for independent living; and

(VII) economic self-sufficiency; and

(v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

(I) **"Environment high risk"** means ~~client's~~member's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical judgment, the physical environment is strongly negative or hazardous.

(J) **"Environment low risk"** means member's UCAT Environment score is 5 which indicates in the UCAT assessor's clinical judgment that, although aspects of the physical environment may need minor repair/improvement, the physical environment poses little risk to member's health and/or safety.

(~~J~~K) **"Environment moderate risk"** means ~~client's~~member's UCAT Environment score is 15 which indicates in the UCAT assessor's clinical judgment, many aspects of the physical environment are substandard or hazardous.

(~~K~~L) **"Health Assessment high risk"** means ~~client's~~member's UCAT health assessment score is 25 which indicates in the UCAT assessor's clinical judgment, the ~~client~~member has one or more chronic health conditions, whose symptoms are rapidly deteriorating, uncontrolled, or not well controlled and requiring a high frequency or intensity of medical care/oversight to bring under control and whose functional capacity is so limited as to require full time assistance or care performed daily, by, or under the supervision of professional personnel and has multiple unmet needs for services available only through the ADvantage program or a Nursing Facility (NF) and requires NF placement immediately if these needs cannot be met by other means.

(~~L~~M) **"Health Assessment low risk"** means ~~client's~~member's health assessment score is 5 which indicates, in the UCAT assessor's clinical judgment, the ~~client~~ member has one or more chronic, stable, health conditions, whose symptoms are controlled or nearly controlled, which benefit from available, or usually available, medical treatment or corrective measures, and may have an unmet need for a service available only through the ADvantage program or a Nursing Facility (NF) but is not likely to enter a NF if these needs are not met.

(~~M~~N) **"Health Assessment moderate risk"** means ~~client's~~member's UCAT Health Assessment score is 15 which indicates in the UCAT assessor's clinical judgment, the ~~client~~member has one or more chronic changing health conditions, whose symptoms are fragile or worsening and require medical care/oversight, to bring under control or to maintain in a stable, controlled state and has multiple unmet needs for services available only through the ADvantage program or a Nursing Facility (NF) and is likely to enter a NF if these needs are not met.

(~~N~~O) **"IADL"** means the instrumental activities of daily living~~.~~that reflect household chores and tasks within the community essential for sustaining health and safety such as:

(i) shopping,

(ii) cooking,

(iii) cleaning,

(iv) managing money,

(v) using a telephone,

(vi) doing laundry,

(vii) taking medication, and

(viii) accessing transportation.

(~~O~~P) **"IADLs score in high risk range"** means ~~client's~~member's total weighted UCAT IADL score is

12 or more which indicates the ~~client~~member needs some help with 6 IADLs or cannot do 4 IADLs at all.

~~(P) **"Instrumental activities of daily living"** means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:~~

~~(i) shopping,~~
~~(ii) cooking,~~
~~(iii) cleaning,~~
~~(iv) managing money,~~
~~(v) using a telephone,~~
~~(vi) doing laundry,~~
~~(vii) taking medication, and~~
~~(viii) accessing transportation.~~

(Q) ~~**"Mental Retardation"**~~**"Intellectual Disability"** means that the ~~person~~ individual has, as determined by a standardized testing by trained professionals, substantial limitations in functional ability due to significantly sub-average intellectual functioning related to an event occurring before the age of 18.

(R) **"MSQ"** means the mental status questionnaire.

(S) **"MSQ score in high risk range"** means the ~~client's~~member's total weighted UCAT MSQ score is 12 or more which indicates a severe orientation-memory-concentration impairment, or a severe memory impairment.

(T) **"MSQ score at the high end of the moderate risk range"** means the ~~client's~~ member's total weighted UCAT MSQ score is (10) or (11) which indicates an orientation-memory-concentration impairment, or a significant memory impairment.

(U) **"Nutrition high risk"** means a total weighted UCAT Nutrition score is 12 or more which indicates the ~~client~~member has significant eating difficulties combined with poor appetite, weight loss, and/or special diet requirements.

(V) **"Progressive degenerative disease process that responds to treatment"** means a process such as, but not limited to, Multiple Sclerosis (MS), Parkinson's Disease, Human Immunodeficiency Virus (HIV), or Acquired Immunodeficiency Syndrome (AIDS), that, untreated, systematically impairs normal body function which leads to acute illness and/or disability that results in rapid and/or advanced effects beyond those of regular chronic disease degeneration but that reacts positively to a medically prescribed treatment intervention (usually medication) which arrests or significantly delays the destructive action of the process.

(W) **"Reauthorization"** means the official approval by the AA of an ADvantage member's Service Plan after the approval/authorization of the member's initial, or first year, Service Plan. At a minimum, reauthorization of an ADvantage member's Service Plan is required every 12 months.

(X) **"Recertification"** means the formal certification of medical and/or financial eligibility for an ADvantage member by OKDHS within ELDERS and IMS upon completion of the annual review.

(Y) **"Redetermination of eligibility"** means a subsequent determination of eligibility for an ADvantage member after the initial eligibility decision. Redetermination of financial and medical eligibility for ADvantage members is required at a minimum of once every 12 months. A redetermination of Program Eligibility, although not required, may occur when a significant change in the service plan is authorized or a significant change in the living arrangement occurs.

(~~W~~Z) **"Social Resources high risk"** means a total weighted UCAT Social Resources score is 15 or more, which indicates the ~~client~~member lives alone, combined with none or very few social contacts and no supports in times of need.

(2) **Minimum UCAT criteria.** The minimum UCAT criteria for NF level of care criteria are:

(A) Care need: The UCAT documents need for assistance to sustain health and safety as demonstrated by:

(i) either the ADLs or MSQ score is in the high risk range; or

(ii) any combination of two or more of the following:

(I) ADLs score is at the high end of moderate risk range; or,

(II) MSQ score is at the high end of moderate risk range; or,

(III) IADLs score is in the high risk range; or,

(IV) Nutrition score is in the high risk range; or,

(V) Health Assessment is in the moderate risk range, and, in addition;

(B) Loss of independence: The UCAT documents absence of support or adequate environment to meet the needs to sustain health and safety as demonstrated by:

(i) ~~Client~~Member Support is moderate risk; or,

(ii) Environment is high risk; or,

(iii) Environment is moderate risk and Social Resources is in the high risk range; or, regardless of whether criteria under (A) of Care need and (B) ~~of absence of support are met~~Loss of independence;

(C) Expanded criteria: The UCAT documents that:

(i) the ~~client~~member has a clinically documented progressive degenerative disease process that will produce health deterioration to an extent that the ~~person~~individual will meet OAC 317:35-17-2(2)(A) criteria if untreated; and

(ii) the ~~client~~member previously has required Hospital or NF level of care services for treatment related to the condition; and

(iii) a medically prescribed treatment regimen exists that will significantly arrest or delay the disease process; and

(iv) only by means of ADvantage Program eligibility will the individual have access to the required treatment regimen to arrest or delay the disease process.

(3) **NF Level of Care Services.** To be eligible for NF level of care services, meeting the minimum UCAT criteria demonstrates the individual must:

(A) require a treatment plan involving the planning and administration of services that require the skills of licensed or otherwise certified technical or professional personnel, and are provided directly or under the supervision of such personnel;

(B) have a physical impairment or combination of physical, mental and/or functional impairments;

(C) require professional nursing supervision (medication, hygiene and/or dietary assistance);

(D) lack the ability to adequately and appropriately care for self or communicate needs to others;

(E) require medical care and treatment in order to minimize physical health regression or deterioration;

(F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Services~~; and~~.

~~(G) require care that cannot be met through Medicaid State Plan Services, including Personal Care, if financially eligible.~~

317:35-17-3. ADvantage program services

(a) The ADvantage program is a Medicaid Home and Community Based Waiver used to finance ~~noninstitutional~~non-institutional long-term care services for elderly and a targeted group of physically disabled adults when there is a reasonable expectation that within a 30 day period, the person's health, due to disease process or disability, would, without appropriate services, deteriorate and require nursing facility care to arrest the deterioration. ~~ADvantage program members must be SoonerCare eligible and must not reside in an institution, room and board, licensed residential care facility, or licensed assisted living facility, unless the facility is an ADvantage Assisted Living Center.~~Individuals may not be enrolled in ADvantage for the sole purpose of enabling them to obtain Mediciad eligibility. Eligibility for ADvantage is contingent on an individual requiring one or more of the services offered in the waiver at least monthly in order to avoid institutionalization.

(b) The number of individuals who may receive ADvantage services is limited.

(1) To receive ADvantage services, individuals must meet one of the following categories:

(A) be age 65 years or older, or

(B) be age 21 or older if physically disabled and not developmentally disabled or if age 21 or older and not physically disabled, the person has a clinically documented, progressive degenerative disease process that responds to treatment and previously has required hospital or nursing facility (NF) level of care services for treatment related to the condition and requires ADvantage services to maintain the treatment regimen to prevent health deterioration, or

(C) if developmentally disabled and between the ages of 21 and 65, not have ~~mental retardation~~intellectual disability or a cognitive impairment related to the developmental disability.

(2) In addition, the individual must meet the following criteria:

(A) require nursing facility level of care [see OAC 317:35-17-2];

(B) meet service eligibility criteria [see ~~OAC 317:35-17-3(d)~~OAC 317:35-17-3(f)]; and

(C) meet program eligibility criteria [see ~~OAC 317:35-17-3(e)~~317:35-17-3(g)].

(c) ADvantage members are eligible for limited types of living arrangements. The specific living arrangements are set forth below.

(1) ADvantage program members are not eligible to receive services while residing in an institutional setting, including but not limited to licensed facilities such as a hospital, a nursing facility, a licensed residential care facility, or a licensed assisted living facility, (unless the facility is an ADvantage Assisted Living Center), or in an unlicensed institutional living arrangement such as a room and board home/facility.

(2) ADvantage program members may receive services in a contracted ADvantage Assisted Living Center; an ADvantage Assisted Living Center is the only housing-with-nursing-supervised personal care services option in which a person may appropriately receive ADvantage services.

(3) Additional living arrangements in which members may receive ADvantage services are the member's own home, apartment or independent living apartment or a family or friend's home or apartment. A home/apartment unit is defined as a self-contained living space having a lockable entrance to the unit and including a bathroom and food storage/preparation amenities in addition to bedroom/living space.

(4) ADvantage program members may receive services in a shelter or similar temporary housing arrangement which may or may not meet the definition of home/apartment, in emergency situations, for a period not to exceed sixty (60) days during which location and transition to permanent housing is being sought.

(5) For ADvantage members who are full-time students, a dormitory room qualifies as an allowable living arrangement in which to receive ADvantage services for the period during which the member is a student.

(6) Members may receive ADvantage respite services in a nursing facility for a continuous period not to exceed thirty (30) days.

(~~b~~d) Home and Community Based Waiver Services are outside the scope of Medicaid State Plan services. The Medicaid waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of

persons who are categorically needy (refer to OKDHS form 08AX001E (Appendix C-1), Schedule VIII. B. 1.) and without such services would be institutionalized. The estimated cost of providing an individual's care outside the nursing facility cannot exceed the annual cost of caring for that individual in a nursing facility. When determining the ADvantage service plan cost cap for an individual, the comparable SoonerCare cost to serve that individual in a nursing facility is estimated. If the individual has Acquired Immune Deficiency Syndrome (AIDS) or if the individual requires ventilator care, the appropriate SoonerCare enhanced nursing facility rate to serve the individual is used to estimate the ADvantage cost cap.

(~~c~~e) Services provided through the ADvantage waiver are:

(1) case management;

(2) respite;

(3) adult day health care;

(4) environmental modifications;

(5) specialized medical equipment and supplies;

(6) physical therapy/occupational therapy/~~respiratory/~~speech therapy or consultation;

(7) advanced supportive/restorative assistance;

(8) ~~skilled~~ nursing;

(9) home delivered meals;

(10) hospice care;

(11) medically necessary prescription drugs within the limits of the waiver;

(12) personal care (state plan) or ADvantage personal care;

(13) Personal Emergency Response System (PERS);

(14) Consumer-Directed Personal Assistance Services and Supports (CD-PASS);

(15) Institution Transition Services;

(16) assisted living; and

(17) SoonerCare medical services for individuals age 21 and over within the scope of the State Plan.

(~~d~~f) The OKDHS area nurse or nurse designee makes a determination of service eligibility prior to evaluating the UCAT assessment for nursing facility level of care. The following criteria are used to make the service eligibility determination:

(1) an open ADvantage Program waiver slot, as authorized by the waiver document approved by the Centers for Medicare and Medicaid Services (CMS), is available to assure federal participation in payment for services to the individual. If the OKDHS/ASD determines all ADvantage waiver slots are filled, the individual cannot be certified on the OKDHS computer system as eligible for ADvantage services and the individual's name is placed on a waiting list for entry as an open slot becomes available. ~~ADvantage waiver slots and corresponding waiting lists, if necessary, are maintained for persons that have a developmental disability and those that do not have a developmental disability.~~

(2) the individual is in the ADvantage targeted service group. The target group is an individual who is frail and 65 years of age or older or age 21 or older with a physical disability and who does not have ~~mental retardation~~intellectual disability or a cognitive impairment.

(3) the individual ~~does not pose~~is not eligible if he/she poses a physical threat to self or others as supported by professional documentation.

(4) members of the household or persons who routinely visit the household, as supported by professional documentation, do not pose a threat of harm or injury to the individual or other household visitors.

(5) the individual is not eligible if his/her living environment poses a physical threat to self or others as supported by professional documentation where applicable, and measures to correct hazardous conditions or assist the person to move are unsuccessful or not feasible.

(~~e~~g) The State, as part of the waiver program approval authorization, assures CMS that each member's health, safety or welfare can be maintained in their home. If a member's identified needs cannot be met through provision of ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety or welfare in their home cannot be assured. The ~~OKDHS/ASD~~AA determines ADvantage program eligibility through the service plan approval process. ~~The following criteria are used to make the ADvantage program eligibility determination that an individual is not eligible:~~An individual is deemed ineligible for the ADvantage program based on the following criteria:

(1) ~~if~~ the individual's needs as identified by UCAT and other professional assessments cannot be met through ADvantage program services, Medicaid State Plan services and other formal or informal services. The State, as part of the waiver program approval authorization, assures CMS that each waiver individual's health, safety, or welfare can be maintained in their home. If a member's identified needs cannot be met through provision of ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety or welfare in their home cannot be assured.

(2) ~~if~~ the individual poses a physical threat to self or others as supported by professional documentation.

(3) ~~if~~ other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the individual or other household visitors.

~~(4) if the individual's needs are being met, or do not require ADvantage services to be met, or if the individual would not require institutionalization if needs are not met.~~

(~~5~~4) ~~if,~~ after the service and care plan is developed, the risk to individual's health and safety is not acceptable to the individual, or to the interdisciplinary service plan team, or to the OKDHS/ASD.

(5) the individual's living environment poses a physical threat to self or others as supported by professional documentation, where applicable and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible.

(6) the individual's health safety or welfare in their home cannot be assured due to continued refusal of planned services.

(7) the individual does not require at least one ADvantage service monthly.

(~~f~~h) The case manager provides the ~~OKDHS/ASD~~AA with professional documentation to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the service plan as provider safety permits until the individual is removed from the ADvantage program. As a part of the procedures requesting redetermination of program eligibility, the OKDHS/ASD will provide technical assistance to the Provider for transitioning the individual to other services.

(~~g~~i) Individuals determined ineligible for ADvantage program services are notified in writing by OKDHS of the determination and of their right to appeal the decision.

317:35-17-4. Application for ADvantage services

(a) **Application procedures for ADvantage services.** If waiver slots are available, the application process is initiated by the receipt of a UCAT, Part I or by an oral request for services. A written financial application is not required for an individual who has an active Medicaid case. A financial application for ADvantage services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(1) All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

~~(2) An individual residing in an NF or requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using OKDHS form MA-11, Assessment of Assets, when Medicaid application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of Medicaid long term care eligibility is made.~~

(~~3~~2) When Medicaid application is being made, an assessment of resources must be completed ~~if it was not completed when the individual entered the NF or began receiving waiver services~~. For applicants of the ADvantage waiver, those resources owned by the couple the month the application was made determines the spousal share of resources. ~~If the individual applies for Medicaid at the time of entry into the ADvantage waiver, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the Medicaid application form and computed using OKDHS form MA-12, Title XIX Worksheet.~~

(b) **Date of application.**

(1) The date of application is:

(A) the date the applicant or someone acting in his/her behalf signs the application in the county office; or

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or

(C) the date when the request for Medicaid is made orally and the financial application form is signed later. The date of the oral request is entered in "red" above the date the form is signed.

(2) An exception is when OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contracted provider forwards the application and documentation to the OKDHS county office of the ~~client's~~ applicant's county of residence for Medicaid eligibility determination. The application date is the date the ~~client~~applicant signed the application form for the provider.

(c) **ADvantage waiting list procedures.** ADvantage Program "available capacity" is the number of ~~clients~~members that may be enrolled in the Program without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. Upon notification from the AA that 90% of the available capacity has been exceeded, OKDHS Aging Services Division (OKDHS/ASD) notifies OKDHS county offices and contract agencies approved to complete the UCAT, Parts I and II that, until further notice, requests for ADvantage services are not to be processed as applications, but referred to AA to be placed on a waiting list of requests for ADvantage services. As available capacity permits, but remaining in compliance with waiver limits of maximum capacity, and until an increase in ADvantage available capacity occurs, the AA selects in chronological order (first on, first off) requests for ADvantage from the waiting list to forward to the appropriate OKDHS county office for processing the application. When the waiver capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended.

317:35-17-5. ADvantage program medical eligibility determination

The OKDHS area nurse, or nurse designee, makes the medical eligibility determination utilizing professional judgment, the Uniform Comprehensive Assessment Tool (UCAT) I, Part III, and other available medical information.

(1) When ADvantage care services are requested or the UCAT is received in the county office:

(A) the ~~LTC~~OKDHS nurse is responsible for completing the UCAT III.

(B) the social worker is responsible for contacting the individual within three working days to initiate the financial eligibility application process.

(2) Categorical relationship must be established for determination of eligibility for ADvantage services. If categorical relationship to disability has not already been established, the local social worker submits the same information described in OAC 317:35-5-4(2) to the Level of Care Evaluation Unit (LOCEU) to request a determination

of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship to the disabled using the same definition used by SSA. A follow-up is required by the OKDHS social worker with the Social Security Administration to be sure their disability decision agrees with the decision of LOCEU.

(3) Community agencies complete the UCAT, Part I and forwards the form to the county office. If the UCAT, Part I indicates that the applicant does not qualify for Medicaid long-term care services, the applicant is referred to appropriate community resources.

(4) The ~~LTC~~OKDHS nurse completes the UCAT, Part III assessment visit with the ~~client~~ member within 10 working days of receipt of the referral for ADvantage services for a client who is Medicaid eligible at the time of the request. The ~~LTC~~OKDHS nurse completes the UCAT, Part III assessment within 20 working days of the date the Medicaid application is completed for new ~~clients~~applicants.

(5) During the assessment visit, the ~~LTC~~OKDHS nurse informs the ~~client~~applicant of medical eligibility and provides information about the different long-term care service options. If there are multiple household members applying for the ADvantage program, the UCAT assessment is done for the applicant household members during the same visit. The ~~LTC~~OKDHS nurse documents whether the ~~client~~member chooses NF program services or ADvantage program services. In addition, the ~~LTC~~OKDHS nurse makes a level of care and service program recommendation.

(6) The ~~LTC~~OKDHS nurse informs the ~~client~~member and family of agencies certified to deliver ADvantage case management and in-home care services in the local area to obtain the client's primary and secondary informed choices.

(A) If the ~~client~~member and/or family declines to make a provider choice, the ~~LTC~~ OKDHS nurse documents that decision on the ~~client~~member choice form.

(B) The AA uses a rotating system to select an agency for the ~~client~~member from a list of all local certified case management and in-home care agencies.

(7) The ~~LTC~~OKDHS nurse documents the names of the chosen agencies and the agreement (by dated signature) of the ~~client~~member to receive services provided by the agencies.

(8) If the needs of the ~~client~~member require an immediate interdisciplinary team (IDT) meeting with home health agency nurse participation to develop a care plan and service plan, the ~~LTC~~OKDHS nurse documents the need for priority processing.

(9) The ~~LTC~~OKDHS nurse scores the UCAT, Part III. The ~~LTC~~OKDHS nurse forwards the UCAT, Parts I and III, documentation of financial eligibility, and documentation of the ~~client's~~member's case management and in-home care agency choices to the area nurse, or nurse designee, for medical eligibility determination.

(10) If, based upon the information obtained during the assessment, the ~~LTC~~OKDHS nurse determines that the ~~client~~member may be at risk for health and safety, OKDHS Adult Protective Services (APS) staff are notified immediately and the referral is documented on the UCAT.

(11) Within ten working days of receipt of a complete ADvantage application, the area nurse, or nurse designee, determines medical eligibility using NF level of care criteria and service eligibility criteria [refer to OAC 317:35-17-2 and OAC 317:35-17-3] and enters the medical decision on the system. ~~The original documents are sent with the MS-52 to the AA.~~

(12) Upon notification of financial eligibility from the social worker, medical eligibility (MS-52) and approval for ADvantage entry from the area nurse, or nurse designee, the AA communicates with the ~~client and~~ case management provider to begin care plan and service plan development. The AA communicates to the client's case management provider the ~~client's~~member's name, address, case number and social security number, the units of case management and, if applicable, the number of units of home health agency nurse evaluation authorized for care plan and service plan development~~, whether the needs of the client require an immediate IDT meeting with home health agency nurse participation and the effective date for client entry into ADvantage~~. If the member requires an immediate home visit to develop a service plan within 24 hours, the AA contacts the case management provider directly to confirm availability and then sends the new case packet information to the case management provider via facsimile.

(13) If the services must be in place to ensure the health and safety of the ~~client~~member upon discharge to the home from the NF or Hospital, ~~the AA provides administrative case management to develop and implement the care plan and service plan. For administrative case management, the AA, or~~ a nurse case manager from an ADvantage case management provider selected by the client and referred by the AA follows ADvantage Institution Transition case management procedures for care plan and service plan development and implementation. ~~If the AA has provided transition case management services, when the client returns home, the AA begins transitioning case management to the ADvantage case management provider chosen by the client.~~

~~(14) If a client in a hospital requests ADvantage services, the hospital initiates a request for Medicaid ADvantage services by contacting the AA for intake and screening.~~

~~(A) The AA, or a nurse case manager from an ADvantage case management provider selected by the client and referred by the AA completes the UCAT, Part III assessment visit, if possible, with the hospitalized applicant. If the local OKDHS office receives the request for Medicaid ADvantage services for a client in a hospital it is referred to the AA. During the assessment visit, the AA, or ADvantage nurse case manager informs the client of financial and medical eligibility~~

~~criteria and provides information about the different long-term care service options. The AA, or ADvantage nurse case manager documents the client's choice on the UCAT, Part III. The AA, or ADvantage nurse case manager will review forms documenting the selection of provider(s), agreement with the service plan and release of information with the client and obtain the client's dated signature on the forms.~~

~~(B) If the UCAT indicates the client is eligible for ADvantage services and financial eligibility has been determined, the AA, or ADvantage nurse case manager, in consultation with the hospital discharge planner provides administrative case management. The AA, or ADvantage nurse case manager develops a temporary care plan and service plan if services must be in place to ensure the health and safety of the client upon discharge from the hospital. When the client returns home, the AA, or ADvantage nurse case manager transitions case management to the ADvantage case management provider chosen by the client.~~

~~(C) The completed assessment forms are submitted to the OKDHS area nurse who makes the medical eligibility decision, enters it on the system and notifies the AA of the decision.~~

~~(D) If the applicant is determined not eligible for ADvantage, providers follow special procedures specified by the AA to bill for services provided. If authorized by the AA, case management providers may bill using an administrative case management procedure code for services delivered and not reimbursable under any other ADvantage case management procedure code.~~

(~~15~~14) ~~If the client has a current certification and requests a change from Personal Care Services to ADvantage services, a new UCAT is required. The UCAT is updated when a client requests a change from ADvantage services to Personal Care services, or when a client requests a change from the nursing facility to ADvantage services. If a client is receiving ADvantage services and requests to go to a nursing facility, a new medical level of care decision is not needed.~~A new medical level of care determination is required when a member requests any of the following changes in service program:

(A) from State Plan Personal Care to ADvantage services.

(B) from ADvantage to State Plan Personal Care services.

(C) from Nursing Facility to ADvantage services.

(D) from ADvantage to Nursing Facility services.

(15) A new medical level of care determination is not required when a member requests re-activation of ADvantage services after a short-term stay (90 days or less) in a Nursing Facility when the member has had previous ADvantage services and the ADvantage certification period has not expired.

(16) When a UCAT assessment has been completed more than 90 days prior to submission to the area nurse or nurse designee for a medical decision, a new assessment is required.

317:35-17-11. Determining financial eligibility for ADvantage program services

Financial eligibility for individuals in ADvantage program services is determined according to whether or not a spouse remains in the home.

(1) **Individual without a spouse.** For an individual without a spouse, the following rules are used to determine financial eligibility.

(A) **Income eligibility.** To determine the income of the individual, the rules in (i) through (iii) of this subparagraph apply.

(i) If payment of income is made to the individual and another person(s), the income is considered in proportion to the individual's interest.

(ii) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(iii) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in OKDHS form 08AX001E, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds that standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual without a spouse to be eligible for ADvantage services, his/her countable resources cannot exceed the maximum resource standard for an individual listed in OKDHS form 08AX001E, Schedule VIII. D.

(C) **Vendor payment.** For individuals in the ADvantage program who live in a house, an apartment, or other independent living setting, there is not a spenddown calculation as the member does not pay a vendor payment. For individuals in the ADvantage program who reside in an ADvantage Assisted Living Services Center, a vendor payment must be computed if the income exceeds 150% of the federal benefit rate. The member is responsible for payment to the Assisted Living Services Center provider for days of service from the first day of each month in which services have been received until the vendor payment obligation is met.

(D) **Equity in capital resources.** If the equity in the individual's capital resources is in excess of the maximum resource standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources can not reasonably be expected to come within standards in one month, the application is denied.

(2) **Individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or over and in a mental health hospital.** For an individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or over and in a mental health hospital, resources are determined for each individual as the amount owned by each individual plus one-half of the jointly owned resources of the couple. Once this separation of assets is made, a resource of either spouse is not considered available to the other during the receipt of ADvantage program services.

(A) **Income eligibility.** Income is determined separately for an individual and his/her spouse if the spouse is in the ADvantage or HCBW/MR program, or is institutionalized in a NF or ICF/MR, or is 65 or older and in a mental health hospital. The income of either spouse is not considered as available to the other during the receipt of ADvantage services. The rules in (i) - (v) of this subparagraph apply in this situation:

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual cannot exceed the categorically needy standard in OKDHS form 08AX001E, Schedule VIII. B. 1., to be eligible for ADvantage services. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** In order for an individual with a spouse who receives ADvantage or HCBW/MR services, or is institutionalized in a NF or ICF/MR, or is 65 or older and in a mental health hospital to be eligible for ADvantage services, his/her countable resources cannot exceed the maximum resource standard for an individual listed in OKDHS form 08AX001E, Schedule VIII. D.

(C) **Vendor payment.** For individuals in the ADvantage program who live in a house, an apartment, or other independent living setting, there is not a spenddown calculation as the member does not pay a vendor payment. For individuals in the ADvantage program who reside in an ADvantage Assisted Living Services Center, a vendor payment must be computed if the income exceeds 150% of the federal benefit rate. The member is responsible for payment to the Assisted Living Services Center provider for days of service from the first day of each month in which services have been received until the vendor payment obligation is met.

(D) **Equity in capital resources.** If the equity in the individual's capital resources is in excess of the maximum resource standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources can not reasonably be expected to come within standards in one month, the application is denied.

(3) **Individual with a spouse in the home who is not in the ADvantage or HCBW/MR program.** When only one individual of a couple in their own home is in the ADvantage or HCBW/MR program, income and resources are determined separately. However, the income and resources of the individual who is not in the ADvantage or HCBW/MR program (community spouse) must be included on the application form. At redetermination of eligibility, the community spouse's income must be included in the review process. During any month that the individual is in ADvantage program services, the income of the community spouse is not considered available to that individual. The following rules are used to determine the income and resources of each:

(A) **Income eligibility.** To determine the income of both spouses, the rules in (i) - (v) of this subparagraph apply.

(i) If payment of income is made solely to one or the other, the income is considered available only to that individual.

(ii) If payment of income is made to both, one-half is considered for each individual.

(iii) If payment of income is made to either one or both and another person(s), the income is considered in proportion to either spouse's interest (if payment is to that spouse) or one-half of the joint interest if no interest is specified.

(iv) If a legal instrument exists which specifies terms of payment, income is considered according to the terms of the instrument.

(v) After determination of income, the gross income of the individual in the ADvantage program services cannot exceed the categorically needy standard in OKDHS form 08AX001E, Schedule VIII. B. 1., to be eligible for care. If the individual's gross income exceeds this standard, refer to SoonerCare rules for establishing a Medicaid Income Pension Trust [OAC 317:35-5-41.6(a)(6)(B)].

(B) **Resource eligibility.** To determine resource eligibility, it is necessary to determine the amount of

resources for both spouses for the month of the individual's application for the ADvantage program. Of the resources available to the couple (both individual and joint ownership) an amount will be protected for the community spouse which will not be considered available to the spouse receiving ADvantage program services. The amount determined as the spousal share is used for all subsequent applications for SoonerCare, regardless of changes in the couple's resources. The protected spousal share cannot be changed for any reason. ~~When application for SoonerCare is made at the same time the individual begins receiving ADvantage program services, OKDHS Form 08MA012E, Title XIX Worksheet, is used.~~

(i) The first step in the assessment process is to establish the total amount of resources for the couple during the month of application of the spouse into the ADvantage program services (regardless of payment source).

(ii) The community spouse's share is equal to one-half of the total resources of the couple not to exceed the maximum amount of resource value that can be protected for the community spouse, as shown on OKDHS form 08AX001E, Schedule XI.

(iii) The minimum resource standard for the community spouse, as established by the OHCA, is found on OKDHS form 08AX001E, Schedule XI. When the community spouse's share is less than the minimum standard, an amount may be deemed from the other spouse's share to ensure the minimum resource standard for the community spouse. If the community spouse's share equals or exceeds the minimum resource standard, deeming cannot be done.

(iv) If deeming is necessary to meet the minimum resource standard for the community spouse, the amount that is deemed must be legally transferred to the community spouse within one year of the effective date of certification for SoonerCare. At the first redetermination of eligibility, the worker must document that the resources have been transferred. After the first year of SoonerCare eligibility, resources of the community spouse will not be available to the other spouse and resources cannot be deemed to the community spouse.

(v) After the month in which the institutionalized spouse and community spouse have met the resource standard and the institutionalized spouse is determined eligible for benefits, no resources of the community spouse, regardless of value, will be considered available to the institutionalized spouse. If the resources of the community spouse grow to exceed the original deemed amount, the State cannot require the community spouse to apply any of these excess resources toward the cost of the care of the institutionalized spouse.

(vi) When determining eligibility for SoonerCare, the community spouse's share of resources is protected and the remainder considered available to the spouse receiving ADvantage program services.

(vii) The resources determined in (i) - (vi) of this subparagraph for the individual receiving ADvantage program services cannot exceed the maximum resource standard for an individual as shown in OKDHS form 08AX001E, Schedule VIII. D.

(viii) Once the dollar value of the community spouse's share of resources is established for the month of the other spouse's entry into the ADvantage program service, that amount is used when determining resource eligibility for a subsequent SoonerCare application for Long-Term Care for either spouse.

(ix) Once a determination of eligibility for SoonerCare is made, either spouse is entitled to a fair hearing. A fair hearing regarding the determination of the community spouse's resource allowance is held within 30 days of the date of the request for the hearing. Either spouse is entitled to a fair hearing if dissatisfied with a determination of:

(I) the community spouse's monthly income allowance;

(II) the amount of monthly income otherwise available to the community spouse;

(III) determination of the spousal share of resource;

(IV) the attribution of resources (amount deemed); or

(V) the determination of the community spouse's resource allowance.

(x) The rules on determination of income and resources are applicable only when an individual receiving ADvantage program services is likely to remain under care for 30 consecutive days. The 30-day requirement is considered to have been met even if a hospital stay interrupts it or the individual is deceased before the 30-day period ends.

(C) **Vendor payment.** For individuals in the ADvantage program who live in a house, an apartment, or other independent living setting, there is not a spenddown calculation as the member does not pay a vendor payment. For individuals in the ADvantage program who reside in an ADvantage Assisted Living Services Center, after allowable deeming to the community spouse, a vendor payment must be computed if the income exceeds 150% of the federal benefit rate. The member is responsible for payment to the Assisted Living Services Center provider for days of service from the first day of each month in which services have been received until the vendor payment obligation is met.

(D) **Excess resources.** If the equity in the individual's capital resources is in excess of the maximum resource standards, certification is delayed up to 30 days providing plans are made for the applicant to utilize the excess resource. Certification is made at the point the excess resources have been exhausted, with the effective date of certification being shown as the date on which the resources came within the standard. If the excess capital resources cannot reasonably be expected to come within standards in one month, the application is denied.

317:35-17-12. Certification for ADvantage program services

(a) **Application date.** If the applicant is found eligible for SoonerCare, certification may be effective the date of application. The first month of the certification period must be the first month the member was determined eligible for ADvantage, both financially and medically.

(1) As soon as eligibility or ineligibility for ADvantage program services is established, the worker updates the computer form and the appropriate notice is computer generated to the member and the ADvantage Administration (AA). Notice information is retained on the notice file for county use.

(2) An applicant approved for ADvantage program services is mailed a Medical Identification Card.

(b) **Financial certification period for ADvantage program services.** The financial certification period for the ADvantage program services is 12 months. Although "medical eligibility number of months" on the computer input record will show 99 months, redetermination of eligibility is completed according to the categorical relationship.

(c) **Medical Certification period for ADvantage program services.** The medical certification period for ~~the~~ ADvantage program services is up to 12 months. ~~Reassessment and redetermination~~ Redetermination of medical eligibility is completed by OKDHS in coordination with the annual ~~recertification~~reauthorization of the member's service plan ~~by the case manager~~. ~~In addition, an~~An independent ~~evaluation~~redetermination of medical eligibility is completed by the OKDHS Nurse ~~at least every third year~~when, depending upon the needs of the member, the medical certification is determined to be less than 12 months, or, at any time~~. If~~ documentation supports a reasonable expectation that the member ~~will~~may not continue to meet medical eligibility criteria ~~or have a need for long term care services for more than 12 months, the OKDHS Nurse does an independent evaluation of medical eligibility before the end of the current medical certification period~~.

317:35-17-14. Case management services

(a) Case management services involve ongoing assessment, service planning and implementation, service monitoring and evaluation, member advocacy, and discharge planning.

(1) Within one working day of receipt of an ADvantage referral from the ADvantage Administration (AA), the case management supervisor assigns a case manager to the member. ~~Within three working days of being assigned an ADvantage member, the~~The case manager makes a home visit to review the ADvantage program (its purpose, philosophy, and the roles and responsibilities of the member, service provider, case manager, ~~AA~~ and OKDHS in the program), ~~and~~ review, update and complete the UCAT assessment, ~~and to~~ discuss service needs and ADvantage service providers. The Case Manager notifies in writing the member's UCAT identified primary physician that the member has been determined eligible to receive ADvantage services. The notification is via a preprint form that contains the member's signed permission to release this health information and requests physician's office verification of primary and secondary diagnoses and diagnoses code obtained from the UCAT.

(2) Within 14 calendar days of the receipt of an ADvantage referral, the case manager completes and submits to the AA an individualized care plan and service plan for the member, signed by the member and the case management supervisor. The case manager completes and submits to the AA the annual reassessment service plan documents no sooner than 60 days before the existing service plan end date but sufficiently in advance of the end date to be received by the AA at least 30 calendar days before the end date of the existing service plan. Within 14 calendar days of receipt of a Service Plan Review Request (SPR) from the AA, the Case Manager provides corrected care plan and service plan documentation. Within five calendar days of assessed need, the case manager completes and submits a service plan addendum to the AA to amend current services on the care plan and service plan. The care plan and service plan are based on the member's service needs identified by the UCAT, Part III, and includes only those ADvantage services required to sustain and/or promote the health and safety of the member. The case manager uses an interdisciplinary team (IDT) planning approach for care plan and service plan development. If in-home care is the primary service, the IDT includes, at a minimum, the member, a nurse from the ADvantage in-home care provider chosen by the member, and the case manager. Otherwise, the member and case manager constitute a minimum IDT.

(3) The case manager identifies long-term goals, challenges to meeting goals, and service goals including plan objectives, actions steps and expected outcomes. The ADvantage case manager documents on the care plan the presence of two or more ADvantage members residing in the same household and/or when the member and personal care provider reside together. The case manager documents on the IVRA system in the member record any instance in which a member's health or safety would be "at risk" if even one personal care visit is missed. The case manager identifies services, service provider, funding source, units and frequency of service and service cost, cost by funding source and total cost for ADvantage services. The member signs and indicates review/agreement with the care plan and service plan by

indicating acceptance or non-acceptance of the plans. The member, the member's legal guardian or legally authorized representative shall sign the service plan in the presence of the case manager. The signatures of two witnesses are required when the member signs with a mark. If the member refuses to cooperate in development of the service plan, or, if the member refuses to sign the service plan, the case management agency refers the case to the AA for resolution. In addition, based on the UCAT and/or case progress notes that document chronic uncooperative or disruptive behaviors, the ~~LTC~~OKDHS nurse or AA may identify members that require AA intervention.

(A) For members that are uncooperative or disruptive, the ~~AA~~case manager develops an individualized ~~Addendum to the Rights and Responsibilities Agreement~~ plan to overcome challenges to receiving services~~to try to modify the member's uncooperative/disruptive behavior. The Rights and Responsibilities addendum focuses~~focusing on behaviors, both favorable and those that jeopardize the member's well-being and includes a design approach of incremental plans and addenda that allow the member to achieve stepwise successes in the modification of their behavior.

(B) The AA may implement a service plan without the member's signature ~~if the AA has developed an Addendum to the Rights and Responsibilities Agreement for the member. For~~when, for these members, the presence of a document that "requires" their signature may itself trigger a "conflict". In these circumstances, mental health/behavioral issues may prevent the member from controlling their behavior to act in their own interest. Since the person by virtue of level of care and the IDT assessment, needs ADvantage services to assure their health and safety, the AA may ~~implement~~authorize the service plan if the ~~AA~~case manager demonstrates effort to work with and obtain the member's agreement ~~through an individualized Addendum to the Rights and Responsibilities Agreement~~. Should negotiations not result in agreement with the care plan and service plan, the member may withdraw their request for services or request a fair hearing.

(4) CD-PASS Planning and Supports Coordination.

(A) The ADvantage Case Management provider assigns to the CD-PASS member a Case Manager that has successfully completed training on CD-PASS, Independent Living Philosophy,~~and~~ Person-Centered Planning and the individual budgeting process and process guidelines. Case Managers that have completed this specialized CD-PASS training are referred to as Consumer-Directed Agent/Case Managers (CDA/CM) with respect to their CD-PASS service planning and support role in working with CD-PASS members. The CDA/CM educates the member about their rights and responsibilities as well as about community resources, service choices and options available to the member to meet CD-PASS service goals and objectives.

(B) The member may designate a family member or friend as an "authorized representative" to assist in the service planning process and in executing member employer responsibilities. If the member chooses to designate an "authorized representative", the designation and agreement identifying the "willing adult" to assume this role and responsibility is documented with dated signatures of the member, the designee and the member's Case Manager or the AA staff.

(i) A person having guardianship or power of attorney or other court sanctioned authorization to make decisions on behalf of the member has legal standing to be the member's designated "authorized representative".

(ii) An individual hired to provide Personal Services Assistance to a member may not be designated the "authorized representative" for the member.

(iii) The case manager reviews the designation of Authorized Representative, Power of Attorney and Legal Guardian status on an annual basis and this is included in the reassessment packet to AA.

(C) The CDA/CM provides support to the member in the Person-Centered CD-PASS Planning process. ~~Person-Centered Planning is a process directed by the participant, with assistance as needed from an "authorized representative" or support team. The process supports the member to exercise choice and control and to assume a responsible role in developing, implementing and managing their services and supports. The process is intended to identify the strengths, capacities, preferences, needs and desired outcomes of the participant and it may enlist assistance from individuals freely chosen by the participant to serve as important contributors. The Person-Centered Planning process enables the participant to identify and access a personalized mix of paid and non-paid services and supports to help him/her achieve personally defined outcomes in the most inclusive community setting. The focus of Person-Centered Planning is on the individual's development of personal relationships, positive roles in community activities, and self-empowerment skills. Decisions are made and outcomes controlled by the participant. Strengths, preferences and an individualized system of support are identified to assist the individual to achieve functional and meaningful goals and objectives.~~ Principles of Person-Centered Planning are as follows:

(i) The person is the center of all planning activities.

(ii) The member and their representative, or support team, are given the requisite information to assume a controlling role in the development, implementation and management of the member's services.

(iii) The individual and those who know and care about him or her are the fundamental sources of information and decision-making.

(iv) The individual directs and manages a planning process that identifies his or her strengths, capacities, preferences, desires, goals and support needs.

(v) Person-Centered Planning results in personally-defined outcomes.

(D) The CDA/CM encourages and supports the member, or as applicable their designated "authorized representative", to lead, to the extent feasible, the CD-PASS service planning process for Personal Services Assistance. The CDA/CM helps the member define support needs, service goals and service preferences including access to and use of generic community resources. Consistent with member-direction and preferences, the CDA/CM provides information and helps the member locate and access community resources. Operating within the constraints of the Individual Budget Allocation (IBA) units, the CDA/CM assists the member in translating the assessment of member needs and preferences into an individually tailored, personalized service plan.

(E) To the extent the member prefers, the CDA/CM develops assistance to meet member needs using a combination of traditional Personal Care and CD-PASS PSA services. However, the CD-PASS IBA and the PSA unit authorization will be reduced proportional to agency Personal Care service utilization.

(F) The member determines with the PSA to be hired, a start date for PSA services. The member coordinates with the CDA/CM to finalize the service plan. The start date must be after authorization of services, after completion and approval of the background checks and after completion of the member employee packets.

(G) Based on outcomes of the planning process, the CDA/CM prepares an ADvantage service plan or plan amendment to authorize CD-PASS Personal Service Assistance units consistent with this individual plan and notifies existing duplicative Personal Care service providers of the end date for those services.

(H) If the plan requires an APSA to provide assistance with Health Maintenance activities, the CDA/CM works with the member and, as appropriate, arranges for training by a skilled nurse for the member or member's family and the APSA to ensure that the APSA performs the specific Health Maintenance tasks safely and competently;

(i) If the member's APSA has been providing Advanced Supportive Restorative Assistance to the member for the same tasks in the period immediately prior to being hired as the PSA, additional documentation of competence is not required;

(ii) If the member and APSA attest that the APSA has been performing the specific Health Maintenance tasks to the member's satisfaction on an informal basis as a friend or family member for a minimum of two months in the period immediately prior to being hired as the PSA, and no evidence contra-indicates the attestation of safe and competent performance by the APSA, additional documentation is not required.

(I) The CDA/CM monitors the member's well being and the quality of supports and services and assists the member in revising the PSA services plan as needed. If the member's need for services changes due to a change in health/disability status and/or a change in the level of support available from other sources to meet needs, the CDA/CM, based upon an updated assessment, amends the service plan to ~~increase~~ modify CD-PASS service units appropriate to meet additional member's need and forwards the plan amendment to the AA for authorization and update of the member's IBA.

(J) The CDA/CM uses the ADvantage Risk Management process the results of which are binding on all parties to resolve service planning or service delivery disagreements between members and ADvantage service providers under the following circumstances:

(i) A claim is formally registered with the CDA/CM by the member (or the member's family or "authorized representative"), the AA, or a provider that the disagreement poses a significant risk to the member's health or safety; and

(ii) The disagreement is about a service, or about the appropriate frequency, duration or other aspect of the service; or

(iii) The disagreement is about a behavior/action of the member, or about a behavior/action of the provider.

(K) The CDA/CM and the member prepare an emergency backup/emergency response capability for CD-PASS PSA services in the event a PSA provider of services essential to the individual's health and welfare fails to deliver services. As part of the planning process, the CDA/CM and member define what failure of service or neglect of service tasks would constitute a risk to health and welfare to trigger implementation of the emergency backup. Any of the following may be used in planning for the backup:

(i) Identification of a qualified substitute provider of PSA services and preparation for their quick response to provide backup services when called upon in emergency circumstances (including execution of all qualifying background checks, training and employment processes); and/or,

(ii) Identification of one or more qualified substitute ADvantage agency service providers (Adult Day Care, Personal Care or Nursing Facility Respite provider) and preparation for their quick response to provide backup services when called upon in emergency circumstances.

(L) If the emergency backup fails, the CDA/CM is to request the AA to authorize and facilitate member access to Adult Day Care, Agency Personal Care or Nursing Facility Respite services.

(5) The case manager submits the care plan and service plan to the case management supervisor for review. The case management supervisor documents the review/approval of the plans within two working days of receipt from the case manager or returns the plans to the case manager with notations of errors, problems, and concerns to be addressed. The case manager re-submits the corrected care plan and service plan to the case management supervisor within two working days. The case management supervisor returns the approved care plan and service plan to the case manager. Within one working day of receiving supervisory approval, the case manager forwards, via postal mail, a legible copy of the care plan and service plan to the AA. Case managers are responsible for retaining all original documents for the member's file at the agency. Only priority service needs and supporting documentation may be faxed to the AA with the word, "PRIORITY" being clearly indicated and the justification attached. "Priority" service needs are defined as services needing immediate authorization to protect the health and welfare of the member and/or avoid premature admission to the nursing facility. Corrections to service conditions set by the AA are not considered to be a priority unless the health and welfare of the member would otherwise be immediately jeopardized and/or the member would otherwise require premature admission to a nursing facility.

(6) Within one working day of notification of care plan and service plan authorization, the case manager communicates with the service plan providers and with the member to facilitate service plan implementation. Within one working day of receipt of a copy or the computer-generated authorized service plan from the AA, the case manager sends (by mail or fax) copies of the authorized service plan or computer-generated copies to providers. Within five working days of notification of an initial service plan or a new reassessment service plan authorization, the case manager visits the member, gives the member a copy of the service plan or computer-generated copy of the service plan and evaluates the progress of the service plan implementation. The case manager evaluates service plan implementation on the following minimum schedule:

(A) within 30 calendar days of the authorized effective date of the service plan or service plan addendum amendment; and

(B) monthly after the initial 30 day follow-up evaluation date.

(b) **Authorization of service plans and amendments to service plans.** The ADvantage Administration (AA) ~~certifies~~authorizes the individual service plan and all service plan amendments for each ADvantage member. When the AA verifies member ADvantage eligibility, plan cost effectiveness, that service providers are ADvantage authorized and SoonerCare contracted, and that the delivery of ADvantage services are consistent with the member's level of care need, the service plan is authorized. ~~Except as provided by the process described in OAC 317:30-5-761(6), family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the member (spouse or parent of a minor child).~~

(1) Except as provided by the process described in OAC 317:30-5-761(6), family members may not receive payment for providing ADvantage waiver services. A family member is defined as an individual who is legally responsible for the member (spouse or parent of a minor child).

(2) The OKDHS/ASD may under criteria described in OAC 317:35-15-13 authorize personal care service provision by an Individual PCA (an individual contracted directly with OHCA). Legally responsible family members are not eligible to serve as Individual PCA's.

(~~1~~3) If the service plan authorization or amendment request packet received from case management is complete and the service plan is within cost effectiveness guidelines, the AA authorizes or denies authorization within five working days of receipt of the request. If the service plan ~~authorization or amendment request packet received from case management is complete and the service plan~~ is not within cost-effectiveness guidelines, the plan is referred for administrative review to develop an alternative cost-effective plan or assist the member to access services in an alternate setting or program. If the request packet is not complete, the AA notifies the case manager immediately and puts a "hold" on authorization until the required additional documents are received from case management.

(~~2~~4) The AA authorizes the service plan by entering the authorization date and ~~signing the submitted service plan~~assigning a control number that internally identifies the OKDHS staff completing the authorization. Notice of authorization and a computer-generated copy of the authorized plan or a computer-generated copy of the authorized plan are provided to case management. AA authorization determinations are provided to case management within one working day of the ~~certification~~authorization date. A service plan may be authorized and implemented with specific services temporarily denied. The AA communicates to case management the conditions for approval of temporarily denied services. The case manager submits revisions for denied services to AA for approval within 5 working days.

(~~3~~5) For audit purposes (including ~~SURS~~Program Integrity reviews), the computer-generated copy of the authorized service plan is documentation of service authorization for ADvantage waiver and State Plan Personal Care services. State or Federal quality review and audit officials may obtain a copy of specific service plans with original signatures by submitting a request to the ~~AA~~member's case manager.

(c) **Change in service plan.** The process for initiating a change in the service plan is described in this subsection.

(1) The service provider initiates the process for an increase or decrease in service to the member's service plan. The requested changes and justification for them are documented by the service provider and, if initiated by a direct care provider, submitted to the member's case manager. If in agreement, the case manager requests the service changes on a care plan and service plan amendment submitted to the AA within five calendar days of assessed need. The AA ~~approves~~authorizes or denies the care plan and service plan changes ~~within five calendar days of receipt of the plan~~per 317:35-17-14.

(2) The member initiates the process for replacing Personal Care services with Consumer-Directed Personal Services and Supports (CD-PASS) in geographic areas in which CD-PASS services are available. The member may contact the AA ~~using a CD-PASS services request form provided by the Case Manager~~ or by calling the toll-free number established to process requests for CD-PASS services.

(3) A significant change in the member's physical condition or caregiver support, one that requires additional goals, deletion of goals or goal changes, or requires a four-hour or more adjustment in services per week, requires ~~a~~an updated UCAT reassessment by the case manager. The case manager~~, in consultation with AA, makes the determination of need for reassessment. Develops~~develops an amended or new service plan and care plan, as appropriate, and submits the new amended plans for authorization.

(4) One or more of the following changes or service requests require an Interdisciplinary Team review and service plan goals amendment:

(A) the presence of two or more ADvantage members residing in the same household, or

(B) the member and personal care provider residing together, or

(C) a request for a family member to be a paid ADvantage service provider, or

(D) a request for an Individual PCA service provider.

(5) Based on the reassessment and consultation with the AA as needed, the member may, as appropriate, be authorized for a new service plan or be eligible for a different service program. If the member is significantly improved from the previous assessment and does not require ADvantage services, the case manager obtains the member's dated signature indicating voluntary withdrawal for ADvantage program services. If unable to obtain the member's consent for voluntary closure, the case manager requests assistance from the AA. The AA requests that the OKDHS area nurse initiate a reconsideration of level of care. ~~If the member's service needs are different or have significantly increased, the case manager develops an amended or new service plan and care plan, as appropriate, and submits the new/amended plans for authorization.~~

317:35-17-15. Redetermination of eligibility for ADvantage services

(a) The worker must complete a redetermination of financial eligibility prior to the end of the certification period. A notice is generated only if there is a change which affects the member's financial responsibility.

(b) The ADvantage case manager or the OKDHS nurse must complete ~~a~~an annual UCAT reassessment that is reviewed for redetermination of medical eligibility prior to the end of the certification period.

317:35-17-16. Member annual level of care re-evaluation and annual re-authorization of service plan

(a) Annually, the case manager reassesses the member's needs using the UCAT Part I, III and then evaluates the current service plan, especially with respect to progress of the member toward service plan goals and objectives. Based on the reassessment, the case manager develops a new service plan with the member and service providers, as appropriate, and submits the new service plan to the AA for authorization. The case manager initiates the UCAT reassessment and development of the new service plan at least 40 days, but not more than ~~55~~60 days, prior to the current service plan authorization end date. The case manager provides the AA the new reassessment service plan packet no less than 30 days prior to the end date of the existing plan. The new reassessment service plan packet includes the reassessed service plan, UCAT Parts I and III, Nurse Evaluation and any supporting documentation.

(b) OKDHS reviews the ADvantage case manager UCAT for a level of care redetermination. If policy defined criteria for Nursing Facility level of care cannot be determined or cannot be justified from documentation available or via direct contact with the case manager, a UCAT is completed in the home by the local OKDHS nurse. The local OKDHS nurse submits the UCAT evaluation to the area nurse, or nurse designee, to make the medical eligibility level of care determination.

(c) If medical eligibility redetermination is not made prior to current medical eligibility expiration, the existing medical eligibility certification is automatically extended until level of care redetermination is established. If the member no longer meets medical eligibility the area nurse, or nurse designee, updates the system's "medical eligibility end date" and simultaneously notifies AA electronically.

(d) If OKDHS determines a member no longer meets medical eligibility, the AA communicates to the member's case manager that the member has been determined to no longer meet medical eligibility for ADvantage as of the effective date of the eligibility determination. The case manager communicates with the member and if requested, assists the member to access other services.

317:35-17-17. Supplemental process for expedited eligibility determination (SPEED) [REVOKED]

~~(a) When the ADvantage Administration (AA) determines that a person requires ADvantage services to begin immediately to prevent nursing facility admission or to ensure the person's health or safety and the UCAT, Part I documents that the person is expected to be eligible for ADvantage, either the OKDHS nurse or the AA will complete the assessment for medical eligibility determination. The completed assessment forms are submitted to the area nurse who makes the medical eligibility decision, enters it on the system and notifies the AA of the decision.~~

~~(b) If the applicant fails to meet financial eligibility, providers follow special procedures specified by the AA to bill for services provided. If authorized by the AA, case management providers may bill using an administrative case management procedure code for SPEED services delivered and not reimbursable under any other ADvantage case management procedure code.~~

317:35-17-18. ADvantage services during hospitalization or NF placement

When the member's OKDHS social worker, ADvantage case manager, or the AA is informed (by the member, family or service provider) of a member's hospitalization or placement in a nursing facility, that party determines the date of the member's institutionalization and communicates the date, name of the institution, reason for placement and expected duration for placement, to the other ADvantage Program Administrative partners. If a member requires hospital or nursing facility services, the case manager assists the member in accessing institutional care, periodically monitors the member's progress during the institutional stay and, as appropriate, updates the service plan and prepares services to start on the date the member is discharged from the institution and returns home. All case management units for "institution transition" services to plan for and coordinate service delivery and to assist the member to safely return home, even if provided while the person is in an institution, are to be considered delivered on and billed for the date the member returns home from institutional care. ~~When the case manager is informed (by the member, family or service provider) of a member's hospitalization or placement in an NF, the case manager determines the date of the member's institutionalization and communicates the date, name of institution, reason for placement and expected duration of placement to the ADvantage Administration (AA) and the member's OKDHS worker.~~

(1) **Hospital discharge.** When the member returns home from a hospital or when notified of the member's anticipated discharge date, the case manager notifies relevant providers and the AA and coordinates the resumption of services.

(2) **NF placement of less than 30 days.** When the member returns home from a NF stay of 30 days or less or when notified of the member's anticipated discharge date the case manager notifies relevant providers, the member's OKDHS worker and the AA of the discharge and coordinates the resumption of ADvantage services in the home.

(3) **NF placement greater than 30 days.** When the member is scheduled to be discharged and return home from a NF stay that is greater than 30 days, the member's OKDHS worker, ADvantage case manager, or the AA (whoever first receives notification of the discharge), notifies other ADvantage Program Administrative partners to expedite the restart of ADvantage services for the member. In these circumstances, the SPEED process may be used to re-establish ADvantage eligibility to coincide with the date of discharge from the NF. The member's case manager provides "institution transition" case management services to assist the member to re-establish him or herself safely in the home.

317:35-17-19. Closure or termination of ADvantage services

(a) **Voluntary closure of ADvantage services.** If the ~~client~~ member requests a lower level of care than ADvantage services or if the ~~client~~member agrees that ADvantage services are no longer needed to meet his/her needs, a medical decision by the area nurse, or nurse designee, is not needed. The closure request is completed and signed by the ~~client~~member and the case manager and sent to the AA to be placed in the ~~client's~~member's case record. The AA notifies the OKDHS county office of the voluntary closure and effective date of closure. The case manager documents in the case record all circumstances involving the reasons for the voluntary termination of services and alternatives for services if written request for closure cannot be secured.

(b) **Closure due to financial or medical ineligibility.** The process for closure due to financial or medical ineligibility is described in this subsection.

(1) **Financial ineligibility.** Anytime the local OKDHS office determines a ~~client~~member does not meet the financial eligibility criteria, the local OKDHS office notifies the ~~client~~, member provider, and AA of financial ineligibility. A medical eligibility redetermination is not required when a financial ineligibility period does not exceed the medical certification period.

(2) **Medical ineligibility.** Any time the local OKDHS office is notified through MEDATS of a decision that the individual is no longer medically eligible for ADvantage services, the local office notifies the individual, AA and provider of the decision.

(c) **Closure due to other reasons.** Refer to OAC 317:35-17-3(e) - (h).

(d) **Resumption of ADvantage services.** If a ~~client~~member approved for ADvantage services has been without services for less than 90 days and has a current medical and financial eligibility determination, services may be resumed using the previously approved service plan. If a ~~client~~ member decides he/she desires to have his/her services restarted after 90 days, the ~~client~~member must request the services as a new referral through the county office. If an individual is determined to be eligible for Advantage services and is transitioning from a hospital or a nursing facility to a community setting, an

ADvantage case manager may provide Institution Transition case managemet services to assist the individual to establish or re-establish him or herself safely in the home.

317:35-17-21.1. ADvantage and agency Personal Care provider certification

~~Either Aging Services or the~~ ADvantage Administration (AA) forwards information on all certified ADvantage and Personal Care agency providers providing services in the specific OKDHS area to the area nurse and OKDHS county director. The provider information includes agency name, address, contact person for ADvantage/Personal Care programs, provider number, a list of ADvantage/Personal Care services the provider is certified to deliver, and other information as needed by OKDHS staff to achieve efficient service delivery. The AA certifies ADvantage case managers and case management supervisors. The AA maintains a master registry of certified ADvantage case management supervisors and case managers. Case manager certifications are based on successful completion of ADvantage case management training and demonstration of competency in case management and, for supervisors, case management supervision. As additional providers are certified in an OKDHS area or if a provider loses certification, ~~Aging Services or the~~ AA provides appropriate notice to the area nurse and OKDHS county director in counties affected by the certification changes. The OHCA may execute agreements to provide care only with qualified individuals and agencies and facilities which are properly licensed or certified by the state licensing or certification agency and, as applicable, Title XIX certified. The agreement is initiated by application from the individual agency or facility. The agreement expires on a specified date, with termination of the agency license or certification, or automatically terminated on notice, with appropriate documentation, to OHCA that the individual agency or facility is not in compliance with Title XIX (or other federal long-term care) requirements. The AA certifies Title XIX providers of ADvantage services with the exception of pharmacy and medical equipment and supply providers.

317:35-17-24. Referral for social services

In many situations, social services are needed by adults who are receiving medical services through Medicaid. The ~~LTC~~OKDHS nurse may make referrals for social services to the social worker in the local office. In addition to these referrals, a request for social services may be initiated by a ~~client~~member or by another individual acting upon behalf of a ~~client~~member.

(1) The social worker is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.

(2) Among the services provided by the social worker are:

(A) Services which will enable individuals to attain and/or maintain as good physical and mental health as possible;

(B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) Services to encourage the development and maintenance of family and community interest and ties;

(D) Services to promote maximum independence in the management of their own affairs;

(E) Protective services, including evaluation of need for and arranging for guardianship; and

(F) Appropriate family planning services which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

[OAR Docket #12-618; filed 5-10-12]

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

[OAR Docket #12-614]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 18. Programs of All-Inclusive Care for the Elderly
317:35-18-1. [AMENDED]
317:35-18-2. [AMENDED]
317:35-18-3. [AMENDED]
317:35-18-4. [AMENDED]
317:35-18-5. [AMENDED]
317:35-18-6. [AMENDED]
317:35-18-7. [AMENDED]
317:35-18-9. [AMENDED]
317:35-18-10. [AMENDED]
317:35-18-11. [AMENDED]
(Reference APA WF # 11-35)
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The Oklahoma Health Care Authority Board; Then Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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N/A

INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
PACE rules are revised to remove pilot specific requirements and replace with language that is applicable to all PACE providers. Additional revisions include revising the Nursing Facility Level of Care criteria to be more specific to PACE eligibility criteria and cleaning up rules for clarity.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 18. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

317:35-18-1. Programs of All-Inclusive Care for the Elderly (PACE)

This chapter establishes the requirements for ~~the Cherokee Nation Pilot Program~~approved SoonerCare contracted Program of All-Inclusive Care for the Elderly (PACE) providers to provide services to eligible elderly ~~clients~~individuals through the Oklahoma Health Care Authority's (OHCA)~~Programs of All-Inclusive Care for the Elderly (PACE)~~PACE program.

317:35-18-2. Introduction

(a) Programs of All-Inclusive Care for the Elderly (PACE) provide home and community-based acute and long-term care services to eligible individuals who meet the medical requirements for nursing facility care and can be served safely and appropriately in the community. PACE is optional in a State Medicaid program. PACE is jointly funded and administered by the Centers for Medicare and Medicaid Services and the state of Oklahoma. The PACE provider receives a monthly capitation payment and is at full risk for the delivery of all medically necessary services for the ~~recipient~~ individual. For eligible individuals who elect to participate in the PACE program, the OHCA will make capitation payments for individuals who are only eligible for Medicaid or who are dually eligible for Medicaid and Medicare. OHCA will contract with ~~the Cherokee Nation~~providers for ~~a~~the PACE ~~pilot~~ program in the geographic areas as specified and approved in the ~~Cherokee Nation~~ provider PACE application. ~~The Cherokee Nation PACE pilot~~The PACE program will provide medically necessary services to both American Indian/Alaska Native (AI/AN) and non-Indian Medicaid eligible ~~recipients~~individuals.

(b) Rules applicable to the operation of the PACE program are contained in 42 Code of Federal Regulations (CFR), Part 460. These regulations, as currently written or amended in the future, are incorporated by reference as the rule base for operating the PACE program in Oklahoma.

317:35-18-3. Definitions

The words and terms used in this Subchapter have the following meanings, unless the context clearly indicates otherwise:

(1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card;

(2) **"Capitation"** means the per member per month (pmpm) amount that the Oklahoma Health Care Authority pays ~~to the~~ PACE ~~provider~~providers for PACE compensable services.

(3) **"Interdisciplinary Team (IDT)"** means the team of persons who interact and collaborate to assess PACE ~~clients~~participants and plan for their care as set forth in 42 CFR ~~460:102~~460.102. The IDT may also include the PACE ~~client's~~participant's personal representative or advocate.

(4) **"Participant"** means an individual enrolled in a PACE program.

(5) **"Program agreement"** means the three-party agreement between the PACE provider, ~~CMS~~Centers for Medicare & Medicaid Services (CMS), and OHCA.

(6) **"Provider"** means the non-profit entity ~~established by the Cherokee Nation~~ that delivers required PACE services under an agreement with OHCA and CMS.

(7) **"Service area"** means the geographic area served by the provider agency, according to the program agreement.

(8) **"State Administering Agency (SAA)"** means the Oklahoma Health Care Authority.

317:35-18-4. Provider regulations

(a) The provider must comply with provisions of this Subchapter, and the regulations in 42 CFR, Part 460.

(b) The provider agency must be licensed by the State of Oklahoma as an adult day care center.

(c) The provider must meet all applicable local, state, and federal regulations.

(d) The provider must maintain an inquiry log of all individuals requesting Programs of All-Inclusive Care for the Elderly (PACE) services. This log will be available to the OHCA at all times. The log must include:

(1) type of contact;

(2) date of contact;

(3) name and phone number of the individual requesting services;

(4) name and address of the potential ~~client~~participant; and

(5) date of enrollment, or reason for denial if the individual is not enrolled.

317:35-18-5. Eligibility criteria

(a) To be eligible for participation in PACE, the applicant must:

(1) meet categorical relationship to disability (reference OAC 317:35-5-4);

(2) meet medical and financial criteria for the ADvantage program (reference OAC 317:35-17-2, 317:35-17-10, and 317:35-17-11);
(3) be age 55 years or older
(4) live in a PACE service area;
(5) be determined by the PACE Interdisciplinary team as able to be safely served in the community. If the PACE provider denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the PACE provider must:
(A) notify the applicant in writing of the reason for the denial;
(B) refer the ~~individual~~applicant to alternative services as appropriate;
(C) maintain supporting documentation for the denial and notify CMS and OHCA of the denial and make the supporting documentation available for review; and
(D) advise the ~~client~~applicant orally and in writing of the grievance and appeals process.

(b) To be eligible for ~~Medicaid~~SoonerCare capitated payments, the ~~participant~~individual must:
(1) be eligible for Title XIX services if institutionalized as determined by the Oklahoma Department of Human Services;
(2) be eligible for ~~Medicaid~~SoonerCare State Plan services;
(3) be eligible for the ~~Medicaid~~SoonerCare ADvantage program per OAC 317:35-17-3 and 317:35-17-5.

(c) To obtain and maintain eligibility, the ~~participant~~ individual must agree to accept the PACE providers and its contractors as the ~~participant's~~individual's only service provider. The ~~participant~~ individual may be held financially liable for services received without prior authorization except for emergency medical care.

317:35-18-6. Program benefits

(a) A provider agency must provide a participant all the services listed in 42 CFR 460.92 that are approved by the IDT. The PACE benefit package for all participants, regardless of the source of payment, must include but is not limited to the following:
(1) All ~~Medicaid-covered~~SoonerCare-covered services, as specified in the State's approved ~~Medicaid~~SoonerCare plan.
(2) Interdisciplinary assessment and treatment planning.
(3) Primary care, including physician and nursing services.
(4) Social work services.
(5) Restorative therapies, including physical therapy, occupational therapy, and speech-language pathology services.
(6) Personal care and supportive services.
(7) Nutritional counseling.
(8) Recreational therapy.
(9) Transportation.
(10) Meals.
(11) Medical specialty services including, but not limited to the following:
(A) Anesthesiology.
(B) Audiology.
(C) Cardiology.
(D) Dentistry.
(E) Dermatology.
(F) Gastroenterology.
(G) Gynecology.
(H) Internal medicine.
(I) Nephrology.
(J) Neurosurgery.
(K) Oncology.
(L) Ophthalmology.
(M) Oral surgery.
(N) Orthopedic surgery.
(O) Otorhinolaryngology.
(P) Plastic surgery.
(Q) Pharmacy consulting services.
(R) Podiatry.
(S) Psychiatry.
(T) Pulmonary disease.
(U) Radiology.
(V) Rheumatology.
(W) General surgery.
(X) Thoracic and vascular surgery.
(Y) Urology.
(12) Laboratory tests, x-rays and other diagnostic procedures.
(13) Drugs and biologicals.
(14) Prosthetics, orthotics, durable medical equipment, corrective vision devices, such as eyeglasses and lenses, hearing aids, dentures, and repair and maintenance of these items.
(15) Acute inpatient care, including the following:
(A) Ambulance.
(B) Emergency room care and treatment room services.
(C) Semi-private room and board.
(D) General medical and nursing services.
(E) Medical surgical/intensive care/coronary care unit.
(F) Laboratory tests, x-rays and other diagnostic procedures.
(G) Drugs and biologicals.
(H) Blood and blood derivatives.
(I) Surgical care, including the use of anesthesia.
(J) Use of oxygen.
(K) Physical, occupational, respiratory therapies, and speech-language pathology services.
(L) Social services.
(16) Nursing facility care including:
(A) Semi-private room and board;
(B) Physician and skilled nursing services;
(C) Custodial care;
(D) Personal care and assistance;
(E) Drugs and biologicals;

(F) Physical, occupational, recreational therapies, and speech-language pathology, if necessary;

(G) Social services; and

(H) Medical supplies and appliances.

(17) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(b) The following services are excluded from coverage under PACE:

(1) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.

(2) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and non-medical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

(3) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting ~~fran~~from an accidental injury or for reconstruction following mastectomy.

(4) Experimental medical, surgical, or other health procedures.

(5) Services furnished outside of the United States, except as follows:

(A) in accordance with 42 CFR 424.122 through 42 CFR 424.124, and

(B) as permitted under the State's approved Medicaid plan.

317:35-18-7. Appeals process

(a) Internal appeals

(1) Any ~~client~~individual who is denied program services is entitled to an appeal through the provider.

(2) If the ~~client~~individual also chooses to file an external appeal, the provider must assist the ~~client~~individual in filing an external appeal.

(b) External appeals may be filed by any ~~client~~individual covered by:

(1) ~~Medicaid~~SoonerCare through the OHCA legal division.

(2) Medicare but not ~~Medicaid~~SoonerCare through the Centers for Medicare and Medicaid Services hearing process.

317:35-18-9. Continuation of enrollment

(a) At least annually, OHCA must reevaluate whether a participant needs the level of care for nursing facility services.

(b) At least annually, OKDHS will reevaluate the participant's financial eligibility for ~~Medicaid~~ SoonerCare.

(c) If the individual meets the state's medical eligibility criteria and the individual has an irreversible or progressive diagnosis or a terminal illness that could ~~reasonable~~reasonably be expected to result in death in the next six months, and OHCA determines that there is no reasonable expectation of improvement or significant change in the condition because of severity of a chronic condition or the degree of impairment of functional capacity, OHCA will permanently waive the annual recertification requirement and the ~~client~~participant~~may~~will be deemed to be continually eligible for PACE. The assessment form must have sufficient documentation to substantiate the participant's prognosis and functional capacity.

(d) If OHCA determines that a PACE participant no longer meets the medical criteria for nursing facility level of care, the participant ~~may~~will be deemed to continue to be eligible for PACE until the next annual reassessment, if, in the absence of PACE services, it is reasonable to expect that the ~~client~~participant would meet the nursing facility level of care criteria within the next six months.

(e) Participant enrollment continues when OHCA in consultation with the PACE organization, makes a determination of continued eligibility based on a review of the participant's medical record and plan of care. The participant's medical record and plan of care must support deemed continued eligibility.

317:35-18-10. Disenrollment (voluntary and involuntary)

(a) ~~The member~~A participant may voluntarily disenroll from PACE at any time without cause ~~but~~ however, the effective date of disenrollment must be the last day of the month that the participant elects to disenroll.

(b) A participant may be involuntarily disenrolled for any of the following reasons:

(1) The participant/caregiver or guardian fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period.

(2) The participant/caregiver or guardian engages in disruptive or threatening behavior, as described in subsection (c) of this section.

(3) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.

(4) The participant is determined to no longer meet the ~~State Medicaid~~SoonerCare nursing facility level of care requirements and is not deemed eligible.

(5) The PACE program agreement with CMS and ~~the State administering agency~~OHCA is not renewed or is terminated.

(6) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) A participant may be involuntarily disenrolled for disruptive or threatening behavior. For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(1) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or

(2) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(d) If a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document the following information in the participant's medical record:

(1) The reasons for proposing to disenroll the participant.

(2) All efforts to remedy the situation.

(e) A participant may be disenrolled involuntarily for noncompliant behavior.

(1) PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.

(2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

(f) Before an involuntary disenrollment is effective, ~~the State administering agency must~~OHCA will review ~~it~~the participant's medical record and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

317:35-18-11. Data collection and reporting

The PACE provider must:

(1) collect ~~and enter~~ data to comply with reporting requirements in provider application~~into the DATA PACE system.~~;

(2) generate and maintain monthly reports from ~~the DATA PACE system.~~collected data;

(3) make the reports available to the OHCA~~.~~; and

(4) comply with all data requests as specified by the OHCA within 30 days of such requests.

[OAR Docket #12-614; filed 5-10-12]

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

[OAR Docket #12-603]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. Living Choice Program
317:35-23-2. [AMENDED]
317:35-23-3. [AMENDED]
317:35-23-4. [AMENDED]
(Reference APA WF # 11-21B)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6071 of the Deficit Reduction Act of 2005, Section 2403 of the Affordable Care Act, June 1, 2011 CMS guidance correspondence
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
OHCA rules for the Living Choice demonstration program are revised to clarify that individuals residing in a nursing facility or ICF/MR in lieu of incarceration are not eligible for the Living Choice program. Rules are also revised to add that Living Choice members who have completed their full 365 days of eligibility and are re-institutionalized for 90 consecutive days are eligible to re-apply for an additional 365 days of service. Other minor policy revisions are also included.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 23. LIVING CHOICE PROGRAM

317:35-23-2. Eligibility criteria

Adults with disabilities or long-term illnesses, members with ~~mental retardation~~intellectual disabilities and members with physical disabilities are eligible to transition into the community through the Living Choice program if they meet all of the criteria in paragraphs (1) through (7) of this subsection.

(1) He/she must be at least 19 years of age.

(2) He/she must reside in an institution (nursing facility or public ICF/MR) for at least 90 consecutive days prior to the proposed transition date. If any portion of the 90 days includes time in a skilled nursing facility, those days cannot be counted toward the 90 day requirement, if the member received Medicare post-hospital extended care rehabilitative services.

(3) He/she must have at least one day of Medicaid paid long-term care services prior to transition.

(4) If transitioning from an out of state institution, he/she must be SoonerCare eligible.

(5) He/she requires at least the same level of care that necessitated admission to the institution.

(6) He/she must reside in a qualified residence after leaving the institution. A qualified residence is defined in (A) through (C) of this paragraph.

(A) a home owned or leased by the individual or the individual's family member;

(B) an apartment with an individual lease, with a locking entrance/exit, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and

(C) a residence, in a community-based residential setting, in which no more than four unrelated individuals reside.

(7) His/her needs can be met by the Living Choice program while living in the community.

(8) He/she must not be a resident of a nursing facility or ICF/MR in lieu of incarceration.

317:35-23-3. Participant disenrollment

(a) ~~Members are~~A member is disenrolled from the program if he/she:

(1) is admitted to a hospital, nursing facility, ICF/MR, residential care facility or behavioral health facility for more than 30 consecutive days;

(2) is incarcerated;

(3) is determined to no longer meet SoonerCare financial eligibility for home and community based services;

(4) determined by the Social Security Administration or OHCA Level of Care Evaluation Unit to no longer have a disability that qualifies for services under the Living Choice program; or

(5) moves out of state.

(b) Payment cannot be made for an individual who is in imminent danger of harm to self or others.

317:35-23-4. Re-enrollment

(a) **Members in the Living Choice Program**

(1) The member remains eligible during periods of institutionalization as long as the stay does not exceed 30 days.

(2~~a~~) A member with an institutional stay longer than 30 days may re-enroll in the program without ~~residing in an institution for the six months prior~~re-establishing the 90 day institutional residency requirement if:

(A~~1~~) the necessity for the institutionalization is documented in the revised individual transition plan; and

(B~~2~~) the member can safely return to the community as determined by the transition coordinator, the member and the transition planning team.

(3) The re-enrolled member is eligible to receive services for any remaining days up to the 365 day limit.

~~(b) The member remains eligible during hospitalization and convalescent care periods as long as the stay does not exceed six months~~.

(b) **Members no longer in the Living Choice Program.**

(1) Members who have completed 365 days in the Living Choice Program and have been re-institutionalized for a minimum of 90 consecutive days may be eligible for re-enrollment in the Living Choice Program. Before re-enrollment of a former member, a re-evaluation of the former member's plan of care must be completed and a determination made if the plan of care could not be carried out as a result of:

(A) medical and/or behavioral changes resulting in the necessity of readmission into the inpatient facility;

(B) the lack of community services to support the member that were identified in the original plan of care; or

(C) the plan of care was not supported by the delivery of quality services.

(2) After determining the basis for re-institutionalization and creation of a new plan of care that ensures the health and safety of the former member, he/she may be re-enrolled for an additional 365 days.

[OAR Docket #12-603; filed 5-10-12]

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

[OAR Docket #12-595]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Member Services
Part 11. Other Community Residential Supports
317:40-5-152. [AMENDED]
Subchapter 7. Employment Services Through Home And Community-Based Services Waivers
317:40-7-4. [AMENDED]
(Reference APA WF # 11-04C)
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The Oklahoma Health Care Authority Board; Then Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 111-256
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SUPERSEDED EMERGENCY ACTIONS:
N/A
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N/A
ANALYSIS:
OHCA rules are revised to change language in policy that references "mental retardation" to "intellectual disabilities". Revisions are necessary to comply with Public Law 111-256 (Rosa's Law) that replaces the term mental retardation with intellectual disability, in federal education, health and labor laws.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based Services (HCBS) Waivers for persons with intellectual disabilities ~~(mental retardation)~~ or certain persons with related conditions

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid HCBS Waivers per OAC 317:35-9-5 and as defined in Section 1915(c) of the Social Security Act. The specific waivers are the In-Home Supports Waiver (IHSW) for Adults, the In-Home Supports Waiver (IHSW) for Children, the Community Waiver, and the Homeward Bound Waiver.

(b) **Program provisions.** Each individual requesting services provided through a HCBS Waiver and his or her family or guardian are responsible for:

(1) accessing, with the assistance of OKDHS staff, all benefits available under Oklahoma's Medicaid State Plan or other payment sources prior to accessing funding for those same services under a HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources; and

(3) choosing between services provided through a HCBS Waiver and institutional care.

(c) **Waiver Eligibility.** To be eligible for Waiver services, an applicant must meet the criteria established in paragraph (1) of this Subsection and the criteria for one of the Waivers established in Subparagraph (A), (B), or (C) of this Subsection.

(1) Services provided through a HCBS Waiver are available to Oklahoma residents meeting SoonerCare eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in subsection (a) of this Section, a person must meet conditions per OAC 317:35-9-5. The individual must be determined financially eligible for SoonerCare per OAC 317:35-9-68. The SoonerCare eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, residential care facility as described in Section 1-819 of Title 63 of Oklahoma Statutes, or Intermediate Care facility for persons with mental retardation (ICF/MR). The individual may not be receiving DDSD state-funded services such as the Family Support Assistance Payment, Respite Voucher Program, sheltered workshop services, community integrated employment services, or assisted living without waiver supports per OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers.** To be eligible for services funded through the In-Home Supports Waiver (IHSW), a person must:

(i) meet all criteria given in subsection (c) of this Section; and

(ii) be determined to have a disability and a diagnosis of intellectual disability ~~(mental retardation)~~ by the Social Security Administration (SSA); or

(iii) be determined to have a disability, and a diagnosis of intellectual disability ~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA Level of Care Evaluation Unit (LOCEU);

(iv) be three years of age or older;

(v) be determined by the OHCA/LOCEU to meet the ICF/MR Institutional Level of Care requirements per OAC 317:30-5-122;

(vi) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

(III) an OKDHS Children and Family Services Division (CFSD) foster home; or

(IV) a CFSD group home; and

(vii) have critical support needs that can be met through a combination of non-paid, non-Waiver, and SoonerCare resources available to the individual, and with HCBS Waiver resources that are within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:

(i) meet all criteria given in subsection (c) of this Section;

(ii) be determined to have a disability and a diagnosis of intellectual disability ~~(mental retardation)~~ by the SSA; or

(iii) have intellectual disability~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition by the DDSD and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(iv) be determined to have a disability and a diagnosis of intellectual disability~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders or the OHCA/LOCEU; and

(v) be three years of age or older; and

(vi) be determined by the OHCA/LOCEU, to meet the ICF/MR Institutional Level of Care requirements per OAC 317:30-5-122; and

(vii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDSD Division Director or designee.

(C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:

(i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(ii) meet all criteria for HCBS Waiver services given in subsection (c) of this Section; and

(iii) be determined to have a disability and a diagnosis of intellectual disability ~~(mental retardation)~~ by SSA; or

(iv) have an intellectual disability ~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition per OAC 317:35-9-45 by DDSD and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(v) have a disability ~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA/LOCEU; and

(vi) meet the ICF/MR Institutional Level of Care requirements per OAC 317:30-5-122 by the OHCA/LOCEU.

(2) The person desiring services through any of the Waivers listed in subsection (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBS Waiver services eligibility, including:

(A) a psychological evaluation, by a licensed Psychologist or State staff supervised by a licensed Psychologist, current within 12 months of requested approval date, that includes:

(i) a full scale functional and/or adaptive assessment; and

(ii) a statement of age of onset of the disability; and

(iii) intelligence testing that yields a full scale intelligence quotient.

(B) a social service summary, current within 12 months of requested approval date, that includes a developmental history; and

(C) a medical evaluation current within 90 days of requested approval date; and

(D) a completed ICF/MR Level of Care Assessment form (LTC-300); and

(E) proof of disability according to SSA guidelines. If a disability determination had not been made by SSA, the OHCA/LOCEU may make a disability determination using the same guidelines as SSA.

(3) The OHCA reviews the diagnostic reports listed in paragraph (2) of this subsection and makes a determination of eligibility for DDSD HCBS Waivers.

(4) For individuals who are determined to have intellectual disability ~~(mental retardation)~~ or a related condition by DDSD in accordance with the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, DDSD reviews the diagnostic reports listed in paragraph (2) of this subsection and, on behalf of the OHCA, makes a determination of eligibility for DDSD HCBS Waiver services and ICF/MR level of care.

(5) A determination of need for ICF/MR Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(d) **Request list.** When State DDSD resources are unavailable for new persons to be added to services funded through a HCBS Waiver, persons are placed on a statewide Request for Waiver Services List.

(1) The Request for Waiver Services List is maintained in chronological order based on the date of receipt of a written request for services.

(2) The Request for Waiver Services List for persons requesting services provided through a HCBS Waiver is administered by DDSD uniformly throughout the state.

(3) An individual is removed from the Request for Waiver Services List if the individual:

(A) is found to be ineligible for services;

(B) cannot be located by OKDHS;

(C) does not provide required information to OKDHS;

(D) is not a resident of the state of Oklahoma at the time of requested Waiver approval date; or

(E) declines an offer of Waiver services

(e) **Applications.** When resources are sufficient for initiation of HCBS Waiver services, DDSD ensures action regarding a request for services occurs within 45 days. If action is not taken within the required 45 days, the applicant may seek resolution as described in OAC 340:2-5.

(1) Applicants are allowed 60 days to provide information requested by DDSD to determine eligibility for services.

(2) If requested information is not provided within 60 days, the applicant is notified that the request has been denied, and the individual is removed from the Request for Waiver Services List.

(f) **Admission protocol.** Initiation of services funded through a HCBS Waiver occurs in chronological order from

the Request for Waiver Services List in accordance with subsection (d) of this Section based on the date of DDSD receipt of a completed request for services, as a result of the informed choice of the person requesting services or his or her legal guardian, and upon determination of eligibility, in accordance with subsection (c) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:

(I) is hospitalized;

(II) has moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) the OKDHS finds that the person needs protective services due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so.

(2) the Legislature has appropriated special funds with which to serve a specific group or a specific class of individuals under the provisions of a HCBS Waiver;

(3) Waiver services are required for people who transition to the community from a public or ICF/MR who are children in the State's custody receiving services from OKDHS. Under some circumstances Waiver services related to accessibility may be authorized in advance of transition, but may not be billed until the day the member leaves the ICF/MR and enters the Waiver;

(4) individuals subject to the provisions of Public Law 100-203 residing in nursing facilities for at least 30 continuous months prior to January 1, 1989,and who are determined by Preadmission Screening and Resident Review (PASRR) evaluation conducted pursuant to the provisions of 42 CFR 483.100 et seq to have intellectual disability ~~(mental retardation)~~ or a related condition, who are covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, choose to receive services funded through the Community or Homeward Bound Waiver.

(g) **Movement between DDSD HCBS Waiver programs.** A person's movement from services funded through one HCBS Waiver to services funded through another DDSD-administered HCBS Waiver is explained in this subsection.

(1) When a member receiving services funded through the IHSW for children becomes 18 years of age, services through the IHSW for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a member has critical support needs that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDSD Director or designee; and

(B) funding is available per OAC 317:35-9-5..

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when a member's history of annual service utilization has been within the per capita allowance of the IHSW.

(4) When a member served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(h) **Continued eligibility for HCBS Waiver services.** Eligibility for members receiving services provided through the HCBS Waiver is re-determined by the OHCA/LOCEU when a determination of disability has not been made by the Social Security Administration. The OHCA/LOCEU determines categorical relationship to the SoonerCare disabled category according to Social Security Administration guidelines. OHCA/LOCEU also approves level of care per OAC 317:30-5-122 and confirms a diagnosis of intellectual disability ~~(mental retardation)~~ as defined in the Diagnostic and Statistical Manual of Mental Disorders. DDSD may require a new diagnostic evaluation in accordance with paragraph (c)(2) of this subsection and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status determined under paragraph (c)(2) of this Section has been noted.

(i) **HCBS Waiver services case closure.** Services provided through a HCBS Waiver are terminated:

(1) when a member or the member's legal guardian chooses to no longer receive Waiver services;

(2) when a member is incarcerated;

(3) when a member is financially ineligible to receive Waiver services;

(4) when a member is determined by the Social Security Administration to no longer have a disability qualifying the individual for services under these Waivers;

(5) when a member is determined by the OHCA/LOCEU to no longer be eligible;

(6) when a member moves out of state, or the custodial parent or guardian of a member who is a minor moves out of state;

(7) when a member is admitted to a nursing facility, ICF/MR, residential care facility, hospital, rehabilitation facility, or mental health facility for more than 30 consecutive days;

(8) when the guardian of a member who is a minor or adjudicated adult fails to cooperate during the annual review process as described in OAC 340:100-5-50 through 340:100-5-58;

(9) when the guardian of a member who is a minor or adjudicated adult fails to cooperate in the implementation of OKDHS policy or service delivery in a manner that places the health or welfare of the member at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services have not been effective;

(10) when the member is determined to no longer be SoonerCare eligible; or

(11) when there is sufficient evidence that the member or his/her legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed on in the Individual Plan, or knowingly misused public funds associated with these services;

(12) when the member or his/her legal representative either cannot be located, has not responded to, or has not allowed case management to complete plan development or monitoring activities as required by policy and the member or his/her legal representative:

(A) does not respond to the notice of intent to terminate; or

(B) the response prohibits case management (the case manager) from being able to complete plan development or monitoring activities as required by policy;

(13) when the member or his/her legal representative fails to cooperate with the case manager to implement a Fair Hearing decision;

(14) when it is determined that services provided through a HCBS Waiver are no longer necessary to meet the member's needs and professional documentation provides assurance that the member's health, safety, and welfare can be maintained without Waiver supports;

(15) when the member or his/her legal representative fails to cooperate with service delivery;

(16) when a family member, authorized representative, other individual in the member's household or persons who routinely visit, pose a threat of harm or injury to provider staff or official representatives of OKDHS; or

(17) when a member no longer receives a minimum of one Waiver service per month and DDSD is unable to monitor member on a monthly basis.

(j) **Reinstatement of services.** Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a member is incarcerated for 90 days or less;

(3) a member is admitted to a nursing facility, ICF/MR, residential care facility, hospital, rehabilitation facility, or mental health facility for 90 days or less; or

(4) a member's SoonerCare eligibility is re-established within 90 days of the date of SoonerCare ineligibility.

SUBCHAPTER 5. MEMEBER SERVICES

PART 11. OTHER COMMUNITY RESIDENTIAL SUPPORTS

317:40-5-152. Group home services for persons with ~~mental retardation~~an intellectual disability or certain persons with related conditions

(a) **General Information.** Group homes provide a congregate living arrangement offering up to 24-hour per day supervision, supportive assistance, and training in daily living skills to persons who are eligible 18 years of age or older. Upon approval of the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) director or designee, persons younger than 18 may be served.

(1) Group homes ensure members reside and participate in the community. Services are provided in homes located in close proximity to generic community services and activities.

(2) Group homes must be licensed by DDSD in accordance with Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes.

(3) Residents of group homes receive no other form of residential supports.

(4) Habilitation training specialist (HTS) services or homemaker services for residents of group homes may be approved only by the DDSD director or designee to resolve a temporary emergency when no other resolution exists.

(b) **Minimum provider qualifications.** Approved providers must have a current contract with the Oklahoma Health Care Authority (OHCA) to provide DDSD Home and Community-Based Services (HCBS) Waiver for persons with ~~mental retardation~~an intellectual disability or related conditions.

(1) Group home providers must have a completed and approved application to provide DDSD group home services.

(2) Group home staff must:

(A) complete the OKDHS DDSD-sanctioned training curriculum per OAC 340:100-3-38; and

(B) fulfill requirements for pre-employment screening per OAC 340:100-3-39.

(c) **Description of services.**

(1) Group home services:

(A) meet all applicable requirements of OAC 340:100; and

(B) are provided in accordance with each member's Individual Plan (IP) developed per OAC 340:100-5-50 through 340:100-5-58.

(i) Health care services are secured for each member per OAC 340:100-5-26.

(ii) Members are offered recreational and leisure activities maximizing the use of generic programs and resources, including individual and group activities.

(2) Group home providers:

(A) follow protective intervention practices per OAC 340:100-5-57 and 340:100-5-58;

(B) in addition to the documentation required per OAC 340:100-3-40, must maintain:

(i) staff time sheets that document the hours each staff was present and on duty in the group home; and

(ii) documentation of each member's presence or absence on the daily attendance form provided by DDSD; and

(C) ensure program coordination staff (PCS) meet staff qualifications and supervise, guide, and oversee all aspects of group home services per OAC 340:100-5-22.6 and 340:100-6, as applicable.

(d) **Coverage limitations.** Group home services are provided up to 366 days per year.

(e) **Types of group home services.** There are three types of group home services provided through HCBS Waivers.

(1) **Traditional group homes.** Traditional group homes serve no more than 12 members per OAC 340:100-6.

(2) **Community living homes.** Community living homes serve no more than 12 members.

(A) Members who receive community living home services:

(i) have needs that cannot be met in a less structured setting; and

(ii) require regular, frequent, and sometimes constant assistance and support to complete daily living skills, such as bathing, dressing, eating, and toileting; or

(iii) require supervision and training in appropriate social and interactive skills, due to on-going behavioral issues to remain included in the community.

(B) Services offered in a community living home include:

(i) 24-hour awake supervision when a member's IP indicates it is necessary; and

(ii) program supervision and oversight including hands-on assistance in performing activities of daily living, transferring, positioning, skill-building, and training.

(C) Services may be approved for individuals in a traditional group home at the community living service rate if the member has had a change in health status or behavior and meets requirements to receive community living home services. Requests to receive community living home services are sent to the DDSD Community Services Residential Unit.

(3) **Alternative group homes.** Alternative group homes serve no more than four members who have evidence of behavioral or emotional challenges in addition to ~~mental retardation~~ an intellectual disability and require extensive supervision and assistance in order to remain in the community.

(A) Members who receive alternative group home services must meet criteria per in OAC 340:100-5-22.6.

(B) A determination must be made by the DDSD Community Services Unit that alternative group home services are appropriate.

SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVERS

317:40-7-4. Services provided through Waiver Employment Services

(a) Employment Services are offered under the Medicaid Home and Community-Based Waiver for persons with ~~mental retardation~~intellectual disabilities at rates prescribed by the Oklahoma Health Care Authority.

(b) Types of Waiver Employment Services offered include:

(1) Vocational Habilitation Training Specialist (VHTS), Supplemental Support;

(2) Employment Training Specialist (ETS);

(3) Center-Based Services;

(4) Community-Based Services;

(5) Enhanced Community-Based Services;

(6) Job Coaching;

(7) Enhanced Job Coaching; and

(8) Stabilization Services.

(c) State-funded services described in OAC 340:100-17-30 may supplement Employment Services funded through the Community Waiver.

[OAR Docket #12-595; filed 5-10-12]

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

[OAR Docket #12-612]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-3. [AMENDED]
317:40-5-5. [AMENDED]
317:40-5-8. [REVOKED]
317:40-5-9. [AMENDED]
317:40-5-13. [AMENDED]
Part 5. Specialized Foster Care
317:40-5-59. [AMENDED]
Part 9. Service Provisions

317:40-5-101. [AMENDED]
317:40-5-113. [AMENDED]
Subchapter 7. Employment Services Through Home and Community Based Services Waiver
317:40-7-12. [AMENDED]
317:40-7-15. [AMENDED]
317:40-7-21. [AMENDED]
(Reference APA WF # 11-32B)

AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)

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N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Permanent rule revisions are proposed by the OKDHS Developmental Disability Services Division (DDSD) pertaining to clarification of policy for the termination of Agency Companion providers based on certain background check information and to provide clarification on the limits of background search information for Specialized Foster Care providers regarding involvement in a court action. Additionally policy is revised to require architectural modification contractors to provide evidence of a lead based paint safety certificate; the addition of Adult Day Services for members in the Homeward Bound Waiver; Targeted Case Management to be billed weekly rather than monthly; removal of the Physical Status Review score as one of criteria for determining the enhanced rate for Community Based Group services and Job Coaching Services, and removal of Adult Day Services as an option to the member's required employment hours. Other minor policy revisions are also included.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. MEMBER SERVICES

PART 1. AGENCY COMPANION SERVICES

317:40-5-3. Agency companion services

(a) Agency companion services (ACS):

(1) are provided by agencies that have a provider agreement with the Oklahoma Health Care Authority (OHCA);

(2) provide a living arrangement developed to meet the specific needs of the member that includes a live-in companion providing supervision, supportive assistance, and training in daily living skills provided in a shared home owned or rented by the member, companion, or in a mutually rented or owned home;

(3) are available to members 18 years of age or older who are eligible for services through Community or Homeward Bound Waivers. Persons under the age of 18 years may be served with approval from the DDSD director or designee;

(4) are based on the member's need for residential services per OAC 340:100-5-22 and support as described in the member's Individual Plan ~~(IP)~~(Plan), per OAC 340:100-5-50 through 340:100-5-58.

(b) An agency companion:

(1) must be employed by or contract with a provider agency approved by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD);

(2) may provide companion services for one member. Exceptions to serve as companion for two members may be ~~granted only upon~~ approved by the DDSD director or designee. Exceptions may be approved when members have an existing relationship and to separate them would be detrimental to their well being and the companion demonstrates the skill and ability required to serve as companion for two members;

(3) household is limited to one individual companion provider. Exceptions for two individual companion providers in a household who each provide companion services to different members may be approved by the DDSD director or designee;

(4) may not provide companion services to more than two members at any time;

(5) household may not serve more than three members through any combination of companion or respite services;

(6) may not have employment, volunteer activities, or personal commitments that prevent the companion from fulfilling his or her responsibilities to the member per OAC 317:40-5.

(A) Employment as an agency companion is the companion's primary employment.

(B) The companion may not have other employment when approved to serve two members regardless of the levels of support required by the members.

(C) The companion may have other employment when:

(i) the ~~personal support~~ Team documents and addresses all related concerns in the member's ~~IP~~Plan;

(ii) the other employment is approved in advance by the DDSD area manager or designee; and

(iii) the companion's employment does not require on-call duties and occurs during time the member is engaged in outside activities such as school, employment or other routine scheduled meaningful activities; and

(iv) the companion provides assurance the employment is such that the member's needs will be met by the companion should the member's outside activities be disrupted.

(D) If, after receiving approval for other employment, authorized DDSD staff determines the other employment interferes with the care, training, or supervision needed by the member, the companion must terminate, within 30 days:

(i) the other employment; or

(ii) his or her employment as an agency companion.

(E) Homemaker, habilitation training specialist, and respite services are not provided ~~in order~~ for the companion to ~~perform~~maintain other employment.

(c) Each member may receive up to 60 days per year of therapeutic leave without reduction in the agency companion's salary.

(1) Therapeutic leave:

(A) is a SoonerCare payment made to the contract provider to enable the member to retain services; and

(B) is claimed when:

(i) the member does not receive ACS for 24 consecutive hours due to:

(I) a visit with family or friends without the companion;

(II) vacation without the companion; or

(III) hospitalization, regardless of whether the companion is present; or

(ii) the companion uses authorized respite time;

(C) is limited to no more than 14 consecutive days per event, not to exceed 60 days per Plan of Care (POC) year; and

(D) cannot be accrued from one Plan of Care (POC) year to the next.

(2) The therapeutic leave daily rate is the same amount as the ACS per diem rate except for the pervasive rate which is paid at the enhanced agency companion per diem rate.

(3) The provider agency pays the agency companion the salary that he or she would earn if the member were not on therapeutic leave.

(d) The companion may receive a combination of hourly or daily respite per POC year equal to 660 hours for respite for the companion.

(e) Habilitation Training Specialist (HTS) services:

(1) may be approved by the DDSD director or designee when providing ACS with additional support represents the most cost-effective placement for the member when there is an ongoing pattern of not:

(A) sleeping at night; or

(B) working or attending employment, educational, or day services with documented and continuing efforts by the Team;

(2) may be approved when a time-limited situation exists in which the ACS provider is unable to provide ACS, and the provision of HTS will maintain the placement or provide needed stability for the member, and must be reduced when the situation changes;

(3) must be reviewed annually or more frequently as needed, which includes a change in agencies or individual companion providers.

(f) The agency receives a provider rate based on the agency's service model. The AC rate for the:

(1) employer model includes funding for the provider agency for the provision of benefits to the companion; or

(2) contractor model does not include funding for the provider agency for the provision of benefits to the companion.

(~~d~~g) The agency receives a provider rate based on the member's level of support. Levels of support for the member and corresponding payment are:

(1) determined by authorized DDSD staff in accordance with levels described in (A) through(D); and

(2) re-evaluated when the member has a change in agency companion providers which includes a change in agencies or individual companion providers.

(A) **Intermittent level of support.** Intermittent level of support is authorized when the member:

(i) requires minimal physical assistance with basic daily living skills, such as bathing, dressing, and eating;

(ii) may be able to spend short periods of time unsupervised inside and outside the home; and

(iii) requires assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities.

(B) **Close level of support.** Close level of support is authorized when the member:

(i) requires regular, frequent and sometimes constant physical assistance and support to complete daily living skills, such as bathing, dressing, eating, and toileting;

(ii) requires extensive assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities; and

(iii) requires assistance with health, medication, or behavior interventions that may include the need for specialized training, equipment, and diet.

(C) **Enhanced level of support.** Enhanced level of support is authorized when the member:

(i) is totally dependent on others for:

(I) completion of daily living skills, such as bathing, dressing, eating, and toileting; and

(II) medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, and arranging transportation or other activities;

(ii) demonstrates ongoing complex medical issues requiring specialized training courses per OAC 340:100-5-26; or

(iii) has behavioral issues that requires a protective intervention plan (PIP) with a restrictive or intrusive procedure as defined in OAC 340:100-1-2. The PIP must:

(I) be approved by the Statewide Behavior Review Committee (SBRC), per OAC 340:100-3-14;

(II) be reviewed by the Human Rights Committee (HRC), per OAC 340:100-3-6, or

(III) have received expedited approval per OAC 340:100-5-57.

(D) **Pervasive level of support.** Pervasive level of support is authorized when the member:

(i) requires additional professional level support to remain in an agency companion setting due to pervasive behavioral or emotional challenges. The support must be provided:

(I) by a licensed professional counselor (LPC) or professional with a minimum of Masters of Social Work (MSW) degree; and

(II) as ongoing support and training to the companion, offering best practice approaches in dealing with specific members; and

(ii) does not have an available personal support system. The need for this service level:

(I) must be identified by the grand staffing committee, per OAC 340:75-8-40; and

(II) requires the provider to market, recruit, screen, and train potential companions for the member identified.

(h) The Plan reflects the amount of room and board the member pays to the companion. If the amount exceeds $450, the additional amount must be:

(1) agreed upon by the member and, if applicable, legal guardian;

(2) recommended by the Team; and

(3) approved by the DDSD area manager or designee.

317:40-5-5. Agency Companion Services provider responsibilities

(a) Providers of Agency Companion Services (ACS) are required to meet all applicable standards outlined in this subchapter and competency-based training described in OAC 340:100-3-38. The provider agency ensures that all companions meet the criteria in this Section.

(b) Failure to follow any rules or standards, failure to promote the independence of the member, or failure to follow recommendation(s) of the personal support team (Team) results in problem resolution, ~~as described in subsection (b) of~~per OAC 340:100-3-27, for the companion, and if warranted, revocation of approval of the companion.

(c) In addition to the criteria given in OAC 317:40-5-4, the companion:

(1) ensures no other adult or child is cared for in the home on a regular or part-time basis including other Oklahoma Department of Human Services (OKDHS) placements, family members, ~~and~~or friends without prior written authorization from the OKDHS Developmental Disabilities Services Division (DDSD) area manager or designee;

(2) meets the requirements of OAC 317:40-5-103, Transportation. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

(3) transports or arranges transportation for the member to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;

(4) delivers services in a manner that contributes to the member's enhanced independence, self sufficiency, community inclusion, and well-being;

(5) participates as a member of the member's Team and assists in the development of the member's Individual Plan (Plan) for service provision;

(6) with assistance from the DDSD case manager and the provider agency program coordination staff, develops, implements, evaluates, and revises the training strategies corresponding to the relevant outcomes for which the companion is responsible, as identified in the ~~Individual~~ Plan;

(A) The companion documents and provides monthly data and health care summaries to the provider agency program coordination staff.

(B) The agency staff provides monthly reports to the DDSD case manager or nurse.

(7) delivers services at appropriate times as directed in the ~~Individual~~ Plan;

(8) does not deliver services that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA);

(9) is sensitive to and assists the member in participating in the member's chosen religious faith. No member is expected to attend any religious service against his or her wishes;

(10) participates in and supports visitation and contact with the member's natural family, guardian, and friends, provided this visitation is desired by the member;

(11) obtains permission from the member's legal guardian, if a guardian is assigned, and notifies the family, the provider agency program coordination staff, and the case manager prior to:

(A) traveling out of state;

(B) overnight visits; or

(C) involvement of the member in any publicity;

(12) serves as the member's health care coordinator ~~in accordance with~~per OAC 340:100-5-26;

(13) ensures the monthly room and board contribution received from the member ~~as reflected on OKDHS Form~~

~~06AC074E, Service Authorization Budget (SAB),~~ is used toward the cost of operating the household;

(14) assists the member in accessing entitlement programs for which the member may be eligible and maintains records required for the member's ongoing eligibility;

(15) works closely with the provider agency program coordination staff and the DDSD case manager to ensure all aspects of the member's program are implemented to the satisfaction of the member, the member's family or legal guardian, when appropriate, and the member's Team;

(16) assists the member in achieving the member's maximum level of independence;

(17) submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the member;

(18) ensures that the member's confidentiality is maintained ~~in accordance with~~per OAC 340:100-3-2;

(19) supports the member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;

(20) implements training and provides supports that enable the member to actively join in community life;

(21) does not serve as representative payee for the member without a written exception ~~approval~~ from the DDSD area manager or designee;

(A) The written ~~approval~~exception is retained in the member's home record.

(B) When serving as payee, the companion complies with the requirements of OAC 340:100-3-4.

(22) ensures the member's funds are properly safeguarded.

(23) ~~must obtain~~obtains prior approval from the provider agency when making a purchase of over $50.00 with the member's funds;

(24) allows the provider agency staff and DDSD staff to make announced and unannounced visits to the home;

(25) develops an Evacuation Plan, using OKDHS Form 06AC020E, for the home and conducts training with the member;

(26) conducts fire and weather drills at least quarterly and ~~maintains~~documents the ~~Fire and Weather Drill Record, OKDHS~~ fire and weather drills using Form 06AC021E~~, available for review:~~;

(27) develops and maintains a ~~Personal Possession Inventory~~personal possession inventory for personal possessions and adaptive equipment, ~~OKDHS~~using Form 06AC022E~~, documenting the member's possessions and adaptive equipment~~;

(28) supports the member's employment program by:

(A) assisting the member to wear appropriate work attire; and

(B) contacting the member's employer ~~only~~ as outlined by the Team and in the ~~Individual~~ Plan; and

(29) is responsible for the cost of their meals and entertainment during recreational and leisure activities. Activities must be affordable to the member. Concerns about affordability are presented to the Team for resolution.

(~~29~~30) follows all applicable rules promulgated by the Oklahoma Health Care Authority ~~or~~and DDSD, including:

(A) OAC 340:100-3-40;

(B) OAC 340:100-5-50 through 100-5-58;

(C) OAC 340:100-5-26;

(D) OAC 340:100-5-34;

(E) OAC 340:100-5-32;

(F) OAC 340:100-5-22.1;

(G) OAC 340:100-3-27; and

(H) OAC 340:100-3-38.

317:40-5-8. Agency companion services service authorization budget [REVOKED]

~~Upon approval of the home profile per OAC 317:40-5-40, the companion, provider agency, the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) case manager, agency companion services (ACS) staff, and others as appropriate meet to develop a service authorization budget. The service authorization budget form is used to develop the individual service budget for the member's program and is updated annually by the member's Personal Support Team (Team).~~

~~(1) The companion receives:~~

~~(A) a salary based on the level of support needed by the member. The level of support is determined by authorized DDSD staff per OAC 317:40-5-3. The ACS rate for the:~~

~~(i) employer model includes funding for the provider agency for the provision of benefits to the companion; and~~

~~(ii) contractor model does not include funding for the provider agency for the provision of benefits to the companion.~~

~~(B) any combination of hourly or daily respite per Plan of Care year to equal 660 hours in order to provide respite to the companion as reflected on the service authorization budget form.~~

~~(C) Habilitation training specialist (HTS) services:~~

~~(i) may be approved by the DDSD director or designee when providing ACS with additional support represents the most cost-effective placement for the member and the member has an ongoing pattern of not:~~

~~(I) sleeping at night; or~~

~~(II) working or attending employment services, with documented and continuing efforts by the Team.~~

~~(ii) may be approved when a time limited situation exists in which the ACS provider is unable to provide ACS and the provision of HTS will maintain the placement or provide needed stability to the member; and must be reduced when the situation changes.~~

~~(iii) must be reviewed annually or more often if needed, which includes a change in agencies or individual companion providers.~~

~~(2) The service authorization budget form reflects the amount of room and board the member pays to the companion. If the amount exceeds $450, the increase must be:~~

~~(A) agreed to by the member and, if applicable, legal guardian;~~

~~(B) recommended by the Team; and~~

~~(C) submitted with written justification attached to the service authorization budget form to the DDSD area manager or designee for approval.~~

~~(3) A back-up plan identifying respite staff is developed by the provider agency program coordination staff and companion, prior to the meeting to discuss the service authorization budget.~~

~~(A) The back-up plan:~~

~~(i) is submitted to the DDSD case manager for review and approval;~~

~~(ii) describes expected and emergency back-up support and program monitoring for the home; and~~

~~(iii) is reviewed initially and annually by the SFC specialist.~~

~~(B) The companion and provider agency program coordination staff equally share the responsibility to identify approved respite providers who are:~~

~~(i) knowledgeable about the member;~~

~~(ii) trained to implement the member's Individual Plan (Plan);~~

~~(iii) trained per OAC 340:100-3-38; and~~

~~(iv) when possible, involved in the member's daily life.~~

~~(C) The spouse or other adult residing in the home may provide ACS in the absence of the companion, when trained per OAC 340:100-3-38.~~

~~(D) The spouse or other adult residing in the home cannot serve as paid respite staff.~~

~~(4) The companion and respite staff are responsible for the cost of their meals and entertainment during recreation and leisure activities. Activities selected must be affordable to the member and respite staff. Concerns about affordability are presented to the Team for resolution.~~

~~(5) The member is allowed therapeutic leave per OAC 317:40-5-3.~~

317:40-5-9. Payment authorization for Agency Companion Services

Authorization for payment of Agency Companion Services (ACS) is ~~made~~contingent upon ~~the completion~~receipt of:

(1) ~~the letter that approves~~ the ~~applicant~~applicant's approval letter authorizing~~to provide~~ ACS for the identified ~~service recipient~~member;

~~(2) an approved service authorization budget (SAB) in accordance with OAC 317:40-5-8;~~

(~~3~~2) ~~an~~ approved relief and emergency back-up plan;

(~~4~~3) ~~revision of the~~revised Individual Plan;

(~~5~~4) ~~revision of the service recipient's~~revised Plan of Care; and

(~~6~~5) ~~the~~ placement of the ~~service recipient~~member in the ACS home.

317:40-5-13. Agency Companion Services provider agency responsibilities

(a) The agency providing Agency Companion Services (ACS) complies with Oklahoma Health Care Authority and Oklahoma Department of Human Services policies and procedures governing all aspects of service provision.

(b) The provider agency is responsible for all employee or contract provider related activities detailed in this Subchapter.

(c) In the event the provider agency wishes to discontinue services immediately due to an emergency, the provider agency cooperates with the Developmental Disabilities Services Division (DDSD) to secure alternative services in the least restrictive environment.

(d) The provider agency ensures that services provided meet requirements of OAC 340:100-5-22.1, unless different requirements are stated in this Section.

(e) If the agency serves as the ~~service recipient's~~member's representative payee, the agency must adhere to the requirements of OAC 340:100-3-4.1.

(f) The provider agency acts immediately to remedy any situation posing a risk to the health, well-being, or provision of specified services to the ~~service recipient~~member.

(1) In the event of such a risk, the provider agency immediately notifies DDSD of the nature of the situation and notifies DDSD upon the resolution of the threatening situation.

(2) The provider agency's program coordination staff contacts and informs the DDSD case manager within 24 hours of an incident or injury. The provider agency completes and submits incident and injury reports to DDSD in accordance with OAC 340:100-3-34.

(3) A companion is immediately terminated when a provider agency becomes aware that a companion's name appears on the Community Services Worker Registry per OAC 340:100-3-39.

(g) The provider agency ensures that only one ~~service recipient~~member is served in a provider home. Exceptions may be approved by the DDSD area manager or designee.

(h) When the provider agency has knowledge of problems occurring in the placement, the provider agency's program coordination staff immediately schedules a meeting with the companion, the ~~service recipient~~member, the ~~service recipient's~~member's legal guardian or advocate, the DDSD case manager and other appropriate DDSD staff to resolve the issues involved. If resolution of the issues does not occur at the meeting, any participant is to contact the DDSD area manager or designee and the provider agency for resolution.

(i) When a change in the provider agency is requested by the ~~service recipient~~member or the companion, all participants attempt to resolve the issues. No change in the provider agency occurs unless the DDSD area manager or designee agrees that all issues have been discussed.

(j) The decision to remain or terminate services with the provider agency is the choice of the ~~service recipient~~member or his or her legal guardian.

(k) When a ~~service recipient~~member transfers from a provider agency, the provider agency ensures that the ~~service recipient~~member has a 30-day supply of medication and a

seven-day supply of food, household supplies, and personal supplies.

(l) The responsibilities of the provider agency's program coordination staff are:

(1) to visit the provider home daily during the first week of placement;

(2) to visit the home a minimum of three times per month ~~in accordance with~~per OAC 340:100-5-22.1;

(3) to allow the needs of the ~~service recipient~~member to determine the frequency of all other visits;

(4) to coordinate and submit ~~monthly~~quarterly reports to the provider agency for submission to the DDSD area office; and

(5) to communicate regularly with the DDSD case manager regarding any changes in the household or any other program issues or concerns.

(m) The provider agency works with the companion, member, and guardian to develop a back-up plan identifying respite staff. The back-up plan:

(1) is submitted to the DDSD case manager for approval;

(2) describes expected and emergency back-up support and program monitoring for the home; and

(3) is incorporated into the member's Individual Plan (Plan).

(n) The respite provider is:

(1) knowledgeable about the member;

(2) trained to implement the member's Plan;

(3) trained per OAC 340:100-3-38;

(4) responsible for the cost of their meals and entertainment during recreation and leisure activities. Activities selected must be affordable to the member and respite staff. Concerns about affordability are presented to the Team for resolution.

(o) The spouse or other adult residing in the home is considered a natural support and may provide ACS in the absence of the companion, when trained per OAC 340:100-3-38.12.

(p) The spouse or other adult residing in the home cannot serve as paid respite staff.

PART 5. SPECIALIZED FOSTER CARE

317:40-5-59. Back-up Plan for persons receiving Specialized Foster Care

Prior to a member moving into Specialized Foster Care (SFC), the SFC provider and the SFC specialist develop a Back-up Plan. The SFC specialist communicates the Back-Up Plan in writing to the DDSD case manager for incorporation into the Individual Plan.

(1) The Back-up Plan identifies the person(s) who provides emergency back-up supports.

(2) The member's natural family is considered as the first resource for the Back-up Plan at no cost to OKDHS, unless the member is in the custody of the Oklahoma Department of Human Services.

(3) The Back-up Plan contains the name(s) and current telephone number(s) of the person(s) providing back-up service.

(4) When paid providers are necessary, the Back-up Plan explains specifically where the service is to be provided.

(A) If back-up service is to be provided outside the SFC home, a Home Profile must be completed for the back-up staff per OAC 317:40-5-40.

(B) If back-up service is to be provided in the SFC home, the person providing this service must have completed all necessary requirements to become a paid provider, including:

(i) an Oklahoma State Bureau of Investigation (OSBI) name and criminal records history search , including the Department of Public Safety (DPS), Sex Offender, and Mary Rippy Violent Offender Registries;

(ii) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant;

(iii) a search of any involvement as a party in a court action~~;~~that may impact the safety or stability of the member that includes:

(I) victims protective order; or

(II) bankruptcy;

(iv) a search of all Oklahoma Department of Human Services (OKDHS) records, including child welfare (CW) records;

(v) a search of all applicable out-of-state child abuse and neglect registries for any applicant who has not lived continuously in Oklahoma for the past five years. The applicant is not approved without the results of the out-of-state maintained child abuse and neglect registry checks, if a registry is maintained in the applicable state;

(vi) Community Services Worker registry check;

(vii) Oklahoma statutorily mandated liability insurance coverage, and a valid driver license; and

(viii) completion of required DDSD training per OAC 340:100-3-38.4.

(C) The Back-up Plan details where the member and provider will stay if the provider's home is not habitable. If there is a fee to stay in the alternate location, the fee is paid by the provider and not reimbursed by DDSD.

(5) The Back-up Plan is jointly reviewed at least monthly by the SFC specialist and the SFC provider to ensure the Back-up Plan continues to be appropriate and current.

(6) The SFC provider is responsible to report any needed changes in the Back-up Plan to the SFC specialist.

(7) The SFC specialist will report any changes in the Back-up Plan to the case manager.

PART 9. SERVICE PROVISIONS

317:40-5-101. Architectural modifications

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

(b) **General information.** Architectural Modification services:

(1) are provided by building contractors who have contractual agreements with the Oklahoma Health Care Authority to provide Home and community Based Services. Providers must meet requirements of the International Code Council (ICC), formerly the Building Official and Code Administrators (BOCA), for building, electrical, plumbing and mechanical inspections;

(2) include the installation of ramps, grab-bars, widening of doorways, modification of a bathroom or kitchen facilities**,** specialized safety adaptations such as scald protection devices, stove guards, and modifications required for the installation of specialized equipment, which are necessary to ensure the health, welfare and safety of the member or that enable the member to function with greater independence in the home;

(3) must be recommended by the member's Team and included in the member's IP. Arrangements for this service must be made through the member's case manager;

(4) are performed on homes of eligible members who have disabilities that limit accessibility or require modifications to ensure health and safety;

(5) are provided based on the:

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

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

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

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

(E) safety and suitability of the home.

(6) are limited to modifications of two different residences within any seven year period beginning with the member's first request for an approved architectural modification service;

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

(8) may be denied when DDSD determines the home is unsafe or otherwise unsuitable for architectural modifications.

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

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

(9) are provided to eligible members with the homeowner's signed permission;

(10) are not authorized to modify homes solely for family or staff convenience or for cosmetic preference;

(11) are provided on finished rooms complete with wiring and plumbing;

(12) services that do not meet the requirements of OAC 317:40-5-101 may be approved by the DDSD division administrator or designee in exceptional circumstances; and

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

(c) **Assessment and Team process.**

(1) Architectural modification assessments are performed by:

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

(B) a licensed occupational therapist or physical therapist, at the request of designated DDSD area office resource development staff or area program supervisory staff, when the requested architectural modification exceeds or requires a variance to applicable national standards for persons with physical disabilities, or when such expertise is deemed necessary by DDSD area office resource development staff or area program supervisory staff.

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

(A) member's needs;

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

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

(3) The Team considers architectural modifications that:

(A) are necessary to ensure the health, welfare, and safety of the member; and

(B) provide the member increased access to the home to reduce dependence on others for assistance in daily living activities.

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

(1) Contractors are responsible for:

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

(B) following all applicable building codes; and

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

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

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

(4) Contractors must provide evidence of:

(A) liability insurance;

(B) vehicle insurance; ~~and~~

(C) worker's compensation insurance or affidavit of exemption~~.~~; and

(D) lead paint safety certificate.

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

(6) Contractors complete construction in compliance with written assessment recommendations from the:

(A) DDSD area office resource development staff with architectural modification experience; or

(B) a licensed professional.

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

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

(A) All exterior wooden ramps are constructed of number two pressure treated wood.

(B) Surface of the ramp has a rough, non-skid texture.

(C) Ramps are assembled by the use of deck screws.

(D) Hand rails on ramps, if required, are sanded and smooth.

(E) Ramps can be constructed of stamped steel.

(F) Support legs on ramps are no more than six feet apart.

(G) Posts on ramps must be set or anchored in concrete.

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

(A) The roll-in shower includes a new floor that slopes uniformly to the drain at not less than one-fourth nor more than one-half inch per foot.

(B) The material around the drain is flush, without an edge on which water can catch before going into the drain.

(C) Duro-rock, rather than sheet rock, is installed around the shower area, at least 24 inches up from the floor, with green board above the duro-rock.

(D) Tile, shower insert, or other appropriate water resistant material is installed to cover the duro-rock and green board.

(E) The roll-in shower includes a shower pan, or liner if applicable.

(F) Roll in showers may also be constructed with a one piece pre-formed material.

(10) DDSD area office resource development staff inspect any or all architectural modification work, prior to payment of an architectural modifications claim, to ensure:

(A) architectural modifications are completed in accordance with assessments; and

(B) quality of workmanship and materials used comply with requirements of OAC 317:40-5-101.

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

(1) When two or more members share a home that has been modified and the member will no longer be sharing the home, the member whose Plan of Care authorized the modifications is given the first option of remaining in the residence.

(2) Restoration of architectural modifications is performed only for members of the Homeward Bound class when a written agreement between the homeowner and DDSD director, negotiated before any architectural modifications begin, describes in full the extent of the restoration. If no written agreement exists between the DDSD director and homeowner, OKDHS is not responsible to provide, pay for, or authorize any restorative services.

(f) **Services not covered under architectural modifications.** Architectural modifications do not include adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the member, construction, reconstruction, or remodeling of any existing construction in the home, such as floors, sub-floors, foundation work, roof, or major plumbing.

(1) Square footage is not added to the home as part of an architectural modification.

(2) Architectural modifications are not performed during construction or remodeling of a home.

(3) Modifications not authorized by the OKDHS include, but are not limited to:

(A) roofs;

(B) installation of heating or air conditioning units;

(C) humidifiers;

(D) water softener units;

(E) fences;

(F) sun rooms;

(G) porches;

(H) decks;

(I) canopies;

(J) covered walkways;

(K) driveways;

(L) sewer lateral lines or septic tanks;

(M) foundation work;

(N) room additions;

(O) carports;

(P) concrete for any type of ramp, deck, or surface other than a five by five landing pad at the end of a ramp, as described in applicable national standards for persons with physical disabilities as applicable to private homes;

(Q) non-adapted home appliances;

(R) carpet or floor covering that is not part of an approved architectural modification that requires and includes a portion of the floor to be re-covered such as a roll in shower, a door widening; or

(S) a second ramp or roll in shower in a home.

(4) A sidewalk is not authorized unless needed by the member to move between the house and vehicle.

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

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

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

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

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

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

(2) The DDSD area office:

(A) authorizes architectural modification services less than $2500 when the plan of care is less than the state office reviewer limit; and

(B) provides all required information to the DDSD State Office architectural modification programs manager for authorization of services when the plan of care is more than the area office limit or is $2500 or more.

(3) Architectural modifications may be denied when the requirements of OAC 317:40-5-101 are not met.

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

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

317:40-5-113. Adult Day Services

(a) **Introduction.** Adult Day Services are provided by agencies approved by the Developmental Disabilities Services Division (DDSD) of the Oklahoma Department of Human Services (OKDHS) that have a valid Oklahoma Health Care Authority contract for providing Adult Day Services. This service is available through the Community Waiver, Homeward Bound Waiver and through the In-Home Supports Waiver for Adults. Adult Day Services is a structured, comprehensive program that provides a variety of health, social, and related support services in a protective environment for some portion of a day. Individuals who participate in adult day services receive these services on a planned basis during specified hours. Adult day services are designed to work toward the goals of:

(1) promoting the member's maximum level of independence;

(2) maintaining the member's present level of functioning as long as possible, preventing or delaying further deterioration;

(3) assisting the member in achieving the highest level of functioning possible;

(4) providing support, respite, and education for families and other caregivers; and

(5) fostering socialization and peer interaction.

(b) **Eligibility requirements.** Adult Day Services are provided to eligible members whose teams have determined the service is appropriate to meet their needs. Members must:

(1) require ongoing support and supervision in a safe environment when away from their own residence;

(2) be 18 years of age or older; and

(3) not pose a threat to others.

(c) **Provider requirements.** Provider agencies must:

(1) meet the licensing requirements set forth by Section 1-873 et seq of Title 63 of the Oklahoma Statutes;

(2) comply with OAC 310:605, Adult Day Care Centers;

(3) allow DDSD staff to make announced and unannounced visits to the facility during the hours of operation;

(4) provide the DDSD case manager a copy of the individualized plan of care;

(5) submit incident reports per OAC 340:100-3-34;

(6) maintain a copy of the member's Individual Plan (Plan);

(7) submit Oklahoma Department of Human Services (OKDHS), Provider Progress Report for each member receiving services per OAC 340:100-5-52; and

(8) serve as a member of the Personal Support Team and meet the Personal Support Team requirements per OAC 340:100-5-52.

(d) **Coverage.** The member's Plan contains detailed descriptions of services to be provided and documentation of hours of services. All services must be authorized in the Plan and reflected in the approved plan of care. Arrangements for care must be made with the member's case manager.

SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVERS

317:40-7-12. Enhanced rates

An Enhanced Rate is available for both Community-Based Group Services and Group Job Coaching Services when necessary to meet a member's intensive personal needs in the employment setting(s). The need for the enhanced rate is

identified through the Team process and is supported by documentation in the Individual Plan (Plan) with consideration of risk assessment per OAC 340:100-5-56 and assessment of medical, nutritional, and mobility needs and:

(1) Team assessment per OAC 340:100-5-51, OAC 340:100-5-56, OAC 340:100-5-57, and OAC 340:100-5-26 of the member's needs.

(2) the member must:

(A) have a protective intervention plan that:

(i) contains a restrictive or intrusive procedure as defined in OAC 340:100-1-2 implemented in the employment setting;

(ii) has been approved by the State Behavior Review Committee (SBRC) in accordance with OAC 340:100-3-14 or by the Developmental Disabilities Services Division (DDSD) staff per OAC 340:100-5-57; and

(iii) has been reviewed by the Human Rights Committee (HRC) per OAC 340:100-3-6;

(B) have procedures included in the Individual Plan which address dangerous behavior that places the member or others at risk of serious physical harm but are neither restrictive or intrusive procedures as defined in OAC 340:100-1-2. The Team submits documentation of this risk and the procedures to the positive support field specialist to assure that positive approaches are being used to manage dangerous behavior;

(C) have a visual impairment that requires assistance for mobility or safety;

~~(D) have two or more of the circumstances given in this subparagraph.~~

~~(i) The member has medical support needs which are rated at Level 4, Level 5, or Level 6 on the Physical Status Review (PSR), explained in OAC 340:100-5-26 or a comparable level of high medical needs as documented in the Plan.~~

(D~~ii~~) ~~The member has~~have nutritional needs requiring tube feeding or other dependency for food intake which must occur in the employment setting.

(E~~iii~~) ~~The member has~~have mobility needs, such that he or she requires two or more people for lifts, transfers, and personal care. Use of a mechanical lift or other assistive technology has been evaluated for the current employment program and determined not feasible by the DDSD division director or designee; or

(~~E~~F) reside in alternative group home as described in OAC 317:40-5-152.

(3) The enhanced rate can be claimed only if the person providing services fulfills all applicable training criteria specified in OAC 340:100-3-38.

(4) There are no exceptions for the enhanced rate other than as allowed in this Section.

317:40-7-15. Service requirements for employment services through Home and Community-Based Services Waivers

(a) The Developmental Disabilities Services Division (DDSD) case manager, member, a member's family or, if applicable, legal guardian, and provider develop a preliminary plan of services including:

(1) site and amount of the services to be offered;

(2) types of services to be delivered; and

(3) expected outcomes.

(b) To promote community integration and inclusion, employment services are only delivered in non-residential sites.

(1) Employment services through Home and Community-Based Services (HCBS) Waivers cannot be reimbursed if those services occur in the residence or property of the member or provider-paid staff, including garages and sheds, whether or not the garage or shed is attached to the home.

(2) No exceptions to OAC 317:40-7-15(b) are authorized.

~~(c) Providers of HCBS employment services comply with OAC 340:100-17.~~

(~~d~~c) The service provider is required to notify the DDSD case manager in writing when the member:

(1) is placed in a new job;

(2) loses his or her job. A Personal Support Team (Team) meeting must be held if the member loses the job;

(3) experiences significant changes in the community-based schedule or employment schedule; or

(4) experiences other circumstances, per OAC 340:100-3-34.

(~~e~~d) The provider submits Oklahoma Department of Human Services (OKDHS) Provider Progress Report per OAC 340:100-5-52, for each member receiving services.

(~~f~~e) The cost of a member's employment services, excluding transportation and state-funded services per OAC 340:100-17-30, cannot exceed $25,000 per Plan of Care year.

(~~g~~f) Each member receiving residential supports per OAC 340:100-5-22.1 or group home services is employed for 30 hours per week or receives a minimum of 30 hours of employment services, ~~adult day services per OAC 317:40-5-113, or a combination of both,~~ each week, excluding transportation to and from the member's residence.

(1) Thirty hours of employment service each week can be a combination of community-based services, center-based services, employment training specialist (ETS) intensive training services, stabilization services, and job coaching services. Center-based services cannot exceed 15 hours per week for members receiving services through the Homeward Bound Waiver.

(2) Less than 30 hours of employment activities per week requires approval per OAC 317:40-7-21.

317:40-7-21. Exception process for employment services through Home and Community-Based Services Waivers

(a) All exceptions to rules in OAC 317:40-7 are:

(1) approved per OAC 317:40-7-21 prior to service implementation;

(2) intended to result in the Personal Support Team (Team) development of an employment plan tailored to meet the member's needs;

(3) identified in the Individual Plan (Plan) process per OAC 340:100-5-50 through 340:100-5-58; and

(4) documented and recorded in the Individual Plan by the Developmental Disabilities Services Division (DDSD) case manager after Team approval.

(b) A request for an exception to the minimum of 30 hours per week of employment services, ~~adult day services per OAC 317:40-5-113, or a combination of both,~~ per OAC 317:40-7-15, includes documentation of the Team's:

(1) discussion of:

(A) current specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans;

(2) plan with specific steps and target dates to address the situation throughout the Plan of Care year so the exception may be lessened or no longer necessary at the end of the Plan of Care year; and

(3) specific residential schedule to provide integrated activities outside the home while the plan to increase to 30 hours is implemented.

(c) A request for an exception to the maximum limit of 15 hours per week for center-based services, per OAC 317:40-7-6, or continuous supplemental supports, per OAC 317:40-7-13, for a member receiving services through the Homeward Bound Waiver includes documentation of the Team's:

(1) discussion of:

(A) current specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans; and

(2) plan with specific steps and target dates to address the situation throughout the Plan of Care year so the exception may be lessened or no longer necessary at the end of the Plan of Care year.

(d) A request for an alternative to required community-based activities per OAC 317:40-7-5 includes documentation of the Team's:

(1) discussion of:

(A) current specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans; and

(2) plan with specific steps and target dates to address the situation throughout the Plan of Care year so the exception may be lessened or no longer necessary at the end of the Plan of Care year.

(e) Exception requests per OAC 340:40-7-21(f) are documented by the DDSD case manager after Team consensus and submitted to the DDSD area manager or designee within ten working days after the annual IP or interim Team meeting. The area manager approves or denies the request with a copy to the DDSD area office claims staff and case manager based on the thoroughness of the Team's discussion of possible alternatives and reasons for rejection of the other possible alternatives.

(1) State dollar reimbursement for absences of a member receiving services through the Community Waiver in excess of 10% of authorized units up to 150 units is approved for medical reasons only. The request includes:

(A) Team's discussion of current specific situation that requires an exception;

(B) specific medical issues necessitating the exception request; and

(C) a projection of units needed to complete the State fiscal year.

(2) A request for any other exception to rules in OAC 317:40-7-21 requires documentation of the Team's discussion of:

(A) current specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans.

(f) The DDSD director or designee may review exceptions granted per OAC 317:40-7-21, directing the Team to provide additional information, if necessary, to comply with OAC 340:100-3-33.1 and other applicable rules.

[OAR Docket #12-612; filed 5-10-12]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. INSURE OKLAHOMA

[OAR Docket #12-613]

RULEMAKING ACTION:
PERMANENT final adoption
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Subchapter 1. General Provisions
317:45-1-3. [AMENDED]
317:45-1-4. [AMENDED]
(Reference APA WF # 11-33)
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Insure Oklahoma rules are revised to clarify in-network is defined as the highest percentage reimbursement network approved by OHCA. The rules are also revised to clarify that OHCA will only reimburse expenses related to the highest percentage network.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

317:45-1-3. Definitions

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department;

(C) a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which is eligible to qualify for and hold a certificate of authority to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employee" means a person who works for an employer in exchange for earned income. This includes the owners of a business.

"Employer" means the business entity that pays earned income to employees.

"Employer Sponsored Insurance" means the program that provides premium assistance to qualified businesses for approved applicants.

"EOB" means an Explanation of Benefits.

"Explanation of Benefit" means a statement issued by a carrier that indicates services rendered and financial responsibilities for the carrier and Insure Oklahoma member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

"Gross Household Income" or "Annual Gross Household Income" means the countable income (earned or unearned) that is computed pursuant to OHCA's waiver and/or state plan using rules found in OAC 317:35.

"Individual Plan" means the safety net program for those qualified individuals who do not have access to Insure Oklahoma ESI.

"In-network" means providers or health care facilities that are part of a health plan's network of providers with which it has negotiated a discount, and services provided by a physician or other health care provider with a contractual agreement with the insurance company paid at the highest benefit level.

"Insure Oklahoma" means a health plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

"Insure Oklahoma IP" means the Individual Plan program.

"Insure Oklahoma ESI" means the Employer Sponsored Insurance program.

"Member" means an individual enrolled in the Insure Oklahoma ESI or IP program.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"PCP" means Primary Care Provider.

"PEO" or "Professional Employer Organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et.seq.

"Primary Care Provider" means a provider under contract with the Oklahoma Health Care Authority to provide primary care services, including all medically necessary referrals.

"Premium" means a monthly payment to a carrier for health plan coverage.

"Qualified Health Plan (QHP)" means a health plan that has been approved by the OHCA for participation in the Insure Oklahoma program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group health plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying events are defined by the employer's health plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority.

317:45-1-4. Reimbursement for out-of-pocket medical expenses

(a) Out-of-pocket medical expenses for all approved and eligible members (and/or their approved and eligible dependents) will be limited to 5 percent of their annual gross household income. The OHCA will provide reimbursement for out-of-pocket medical expenses in excess of the 5 percent annual gross household income. A medical expense must be for an allowed and covered service by a qualified health plan (QHP) to be eligible for reimbursement. For the purpose of this Section, an allowed and covered service is defined as an in-network service covered in accordance with a qualified health plan's benefit summary and policies. For instance, if a QHP has multiple in-network reimbursement percentage methodologies (80% for level 1 provider and 70% for level 2 provider) the OHCA will only reimburse expenses related to the highest percentage network.

(b) For all eligible medical expenses as defined above in OAC 317:45-1-4(a), the member must submit the OHCA required form and all OHCA required documentation to support that the member incurred and paid the out-of-pocket medical expense. The required documentation must be submitted no later than 90 days after the close of the member's eligibility period. The OHCA required documentation must substantiate that the member actually incurred and paid the eligible out-of-pocket expense. The OHCA may request additional documentation at any time to support a member's request for reimbursement of eligible out-of-pocket medical expenses.

[OAR Docket #12-613; filed 5-10-12]

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

[OAR Docket #12-596]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Medically Fragile Waiver Services
317:50-1-2. [AMENDED]
317:50-1-3. [AMENDED]
Subchapter 3. My Life, My Choice Waiver Services
317:50-3-2. [AMENDED]
Subchapter 5. Sooner Seniors Waiver Services
317:50-5-2. [AMENDED]
(Reference APA WF # 11-04D)
AUTHORITY:
The Oklahoma Health Care Authority Board; Then Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 111-256
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 8, 2012
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
OHCA rules are revised to change language in policy that references "mental retardation" to "intellectual disabilities". Revisions are necessary to comply with Public Law 111-256 (Rosa's Law) that replaces the term mental retardation with intellectual disability, in federal education, health and labor laws.

CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. MEDICALLY FRAGILE WAIVER SERVICES

317:50-1-2. Definitions

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

"ADL" means the activities of daily living. Activities of daily living are activities that reflect the member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,
(B) eating,
(C) dressing,
(D) grooming,
(E) transferring (includes getting in and out of a tub, bed to chair, etc.),
(F) mobility,
(G) toileting, and
(H) bowel/bladder control.

"Cognitive Impairment" means that the person, as determined by the clinical judgment of the LTC Nurse or the AA, does not have the capability to think, reason, remember or learn required for self-care, communicating needs, directing care givers and/or using appropriate judgment for maintenance of their own health or safety. The clinical judgment of cognitive impairment is based on MSQ performance in combination with a more general evaluation of cognitive function from interaction with the person during the UCAT assessment.

"Developmental Disability" means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
(B) is manifested before the individual attains age 22**;**
(C) is likely to continue indefinitely;
(D) results in substantial functional limitations in three or more of the following areas of major life activity:
(i) self-care;
(ii) receptive and expressive language;
(iii) learning;
(iv) mobility;
(v) self-direction;
(vi) capacity for independent living; and
(vii) economic self-sufficiency; and
(E) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

"IADL" means the instrumental activities of daily living.

"Instrumental activities of daily living" means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

(A) shopping,
(B) cooking,
(C) cleaning,
(D) managing money,
(E) using a telephone,
(F) doing laundry,
(G) taking medication, and
(H) accessing transportation.

"Level of Care Services**"** To be eligible for level of care services, meeting the minimum UCAT criteria established for SNF or hospital level of care demonstrates the individual must:

(A) require a treatment plan involving the planning and administration of services that require the skills of licensed or otherwise certified technical or professional personnel, and are provided directly or under the supervision of such personnel;
(B) have a physical impairment or combination of physical, mental and/or functional impairments;
(C) require professional nursing supervision (medication, hygiene and/or dietary assistance);
(D) lack the ability to adequately and appropriately care for self or communicate needs to others;
(E) require medical care and treatment in order to minimize physical health regression or deterioration;
(F) require care that is not available through family and friends, Medicare, Veterans Administration, or other federal entitlement program with the exception of Indian Health Services; and
(G) require care that cannot be met through Medicaid State Plan Services, including Personal Care, if financially eligible.

~~**"Mental Retardation"**~~ **"Intellectual Disability"** means that the person has, as determined by a PASRR level II evaluation, substantial limitations in functional ability due to significantly sub- average intellectual functioning related to an event occurring before the age of 18.

"MSQ" means the mental status questionnaire.

"Progressive degenerative disease process that responds to treatment" means a process such as, but not limited to, Multiple Sclerosis (MS), Parkinson's Disease, Human Immunodeficiency Virus (HIV), or Acquired Immunodeficiency Syndrome (AIDS), that, untreated, systematically impairs normal body function which leads to acute illness and/or disability but that reacts positively to a medically prescribed treatment intervention (usually medication) which arrests or significantly delays the destructive action of the process.

317:50-1-3. Medically Fragile Program overview

(a) The Medically Fragile Waiver program is a Medicaid Home and Community Based Services Waiver used to finance non-institutional long-term care services for a targeted group of physically disabled adults when there is a reasonable expectation that the person's health, due to disease process or disability, would, without appropriate services, deteriorate and require skilled nursing facility or hospital level of care to arrest the deterioration. Medically Fragile Waiver program members must be SoonerCare eligible and must not reside in an institution, room and board licensed residential care facility, or licensed assisted living facility. The number of members who may receive Medically Fragile Waiver services is limited.

(1) To receive Medically Fragile Waiver services, individuals must meet the following criteria:

(A) be 19 years of age or older;

(B) have a chronic medical condition which results in prolonged dependency on medical care for which daily skilled intervention is necessary and is characterized by one or more of the following:

(i) a life threatening condition characterized by reasonably frequent periods of acute exacerbation which requires frequent medical supervision and/or physician consultation and which, in the absence of such supervision or consultation, would require hospitalization;

(ii) require frequent time consuming administration of specialized treatments which are medically necessary;

(iii) be dependent on medical technology such that without the technology, a reasonable level of health could not be maintained.

(2) In addition, the individual must meet the following criteria:

(A) meet service eligibility criteria [see OAC 317:50-1-3(d)]; and

(B) meet program eligibility criteria [see OAC 317:50-1-3(e)].

(b) Home and Community Based Waiver Services are outside the scope of state plan Medicaid services. The Medicaid waiver allows the OHCA to offer certain Home and Community Based services to an annually capped number of persons who are categorically needy (refer to OKDHS form 08AX001E, Schedule VIII. B. 1) and without such services would be institutionalized.

(c) Services provided through the Medically Fragile Waiver are:

(1) case management;

(2) respite;

(3) adult day health care;

(4) environmental modifications;

(5) specialized medical equipment and supplies;

(6) physical therapy, occupational therapy, respiratory therapy, speech therapy or consultation;

(7) advanced supportive/restorative assistance;

(8) skilled nursing;

(9) home delivered meals;

(10) hospice care;

(11) medically necessary prescription drugs within the limits of the waiver;

(12) personal care (state plan), Medically Fragile Waiver personal care;

(13) Personal Emergency Response System (PERS);

(14) Self Direction; and

(15) SoonerCare medical services within the scope of the State Plan.

(d) A service eligibility determination is made using the following criteria:

(1) an open Medically Fragile Waiver Program waiver slot, as authorized by the waiver document approved by the Centers for Medicare and Medicaid Services (CMS), is available to assure federal participation in payment for services to the member. If it is determined that all Medically Fragile Waiver slots are filled, the member cannot be certified as eligible for Medically Fragile Waiver services and the member's name is placed on a waiting list for entry as an open slot becomes available. Medically Fragile Waiver slots and corresponding waiting lists, if necessary, are maintained.

(2) the member is in the Medically Fragile Waiver targeted service group. The target group is an individual who is age 19 or older with a physical disability and may also have ~~mental retardation~~an intellectual disability or a cognitive impairment.

(3) the individual does not pose a physical threat to self or others as supported by professional documentation.

(4) members of the household or persons who routinely visit the household, as supported by professional documentation, do not pose a threat of harm or injury to the individual or other household visitors.

(e) The Medically Fragile Waiver program eligibility determination is made through the service plan approval process. The following criteria are used to make the determination that an individual is not eligible:

(1) if the individual's needs as identified by UCAT and other professional assessments cannot be met through Medically Fragile Waiver program services, SoonerCare State Plan services and other formal or informal services. The State, as part of the waiver program approval authorization, assures CMS that each waiver member's health, safety, or welfare can be maintained in their home. If an individual's identified needs cannot be met through provision of Medically Fragile Waiver program or SoonerCare State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety or welfare in their home cannot be assured.

(2) if the individual poses a physical threat to self or others as supported by professional documentation.

(3) if other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the individual or other household visitors.

(4) if the individual's needs are being met, or do not require Medically Fragile Waiver services to be met, or

if the individual would not require institutionalization if needs are not met.

(5) if, after the service and care plan is developed, the risk to individual health and safety is not acceptable to the individual, or to the interdisciplinary service plan team, or to the OHCA.

(f) Professional documentation is provided to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the service plan as provider safety permits until the member is removed from the Medically Fragile Waiver program. As a part of the procedures requesting redetermination of program eligibility, the OHCA will provide technical assistance to the Provider for transitioning the member to other services.

(g) Individuals determined ineligible for Medically Fragile Waiver program services are notified in writing of the determination and of their right to appeal the decision.

SUBCHAPTER 3. MY LIFE, MY CHOICE WAIVER SERVICES

317:50-3-2. Definitions

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

"ADL" means the activities of daily living. Activities of daily living are activities that reflect the member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,
(B) eating,
(C) dressing,
(D) grooming,
(E) transferring (includes getting in and out of a tub, bed to chair, etc.),
(F) mobility,
(G) toileting, and
(H) bowel/bladder control.

"ADLs score in high risk range" means the member's total weighted UCAT ADL score is 10 or more which indicates the member needs some help with 5 ADLs or that the member cannot do 3 ADLs at all plus the member needs some help with 1 other ADL.

"ADLs score at the high end of the moderate risk range" means member's total weighted UCAT ADL score is 8 or 9 which indicates the member needs help with 4 ADLs or the member cannot do 3 ADLs at all.

"Cognitive Impairment" means that the person, as determined by the clinical judgment of the LTC Nurse does not have the capability to think, reason, remember or learn required for self-care, communicating needs, directing care givers and/or using appropriate judgment for maintenance of their own health or safety. The clinical judgment of cognitive impairment is based on MSQ performance in combination with a more general evaluation of cognitive function from interaction with the person during the UCAT assessment.

"Developmental Disability" means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;
(B) is manifested before the individual attains age 22;
(C) is likely to continue indefinitely;
(D) results in substantial functional limitations in three or more of the following areas of major life activity:
(E) self-care;
(F) receptive and expressive language;
(G) learning;
(H) mobility;
(I) self-direction;
(J) capacity for independent living;
(K) economic self-sufficiency; and
(L) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

"Environment high risk" means member's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical judgment, the physical environment is strongly negative or hazardous.

"Environment moderate risk" means member's UCAT Environment score is 15 which indicates in the UCAT assessor's clinical judgment, many aspects of the physical environment are substandard or hazardous.

"Health Assessment high risk" means member's UCAT health assessment score is 25 which indicates in the UCAT assessor's clinical judgment, the member has one or more chronic health conditions, whose symptoms are rapidly deteriorating, uncontrolled, or not well controlled and requiring a high frequency or intensity of medical care/oversight to bring under control and whose functional capacity is so limited as to require full time assistance or care performed daily, by, or under the supervision of professional personnel and has multiple unmet needs for services available only through the My Life, My Choice program or a Nursing Facility (NF) and requires NF placement immediately if these needs cannot be met by other means.

"Health Assessment low risk" means member's health assessment score is 5 which indicates, in the UCAT assessor's clinical judgment, the member has one or more chronic, stable, health conditions, whose symptoms are controlled or nearly controlled, which benefit from available, or usually available, medical treatment or corrective measures, and may have an unmet need for a service available only through the My Life, My Choice program or a Nursing Facility (NF) but is not likely to enter a NF if these needs are not met.

"Health Assessment moderate risk" means member's UCAT Health Assessment score is 15 which indicates in the UCAT assessor's clinical judgment, the member has one or more chronic changing health conditions, whose symptoms are fragile or worsening and require medical care/oversight,

to bring under control or to maintain in a stable, controlled state and has multiple unmet needs for services available only through the My Life, My Choice program or a Nursing Facility (NF) and is likely to enter a NF if these needs are not met.

"IADL" means the instrumental activities of daily living.

"IADLs score in high risk range" means member's total weighted UCAT IADL score is 12 or more which indicates the member needs some help with 6 IADLs or cannot do 4 IADLs at all.

"Instrumental activities of daily living" means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

(A) shopping,
(B) cooking,
(C) cleaning,
(D) managing money,
(E) using a telephone,
(F) doing laundry,
(G) taking medication, and
(H) accessing transportation.

"Member Support high risk" means member's UCAT Member Support score is 25 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, My Life, My Choice and/or State Plan Personal Care services, very little or no support is available from informal and formal sources and the member requires additional care that is not available through Medicare, Veterans Administration, or other Federal entitlement programs.

"Member Support moderate risk" means member's UCAT Member Support score is 15 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, My Life, My Choice and/or State Plan Personal Care services, support from informal and formal sources is available, but overall, it is inadequate, changing, fragile or otherwise problematic and the member requires additional care that is not available through Medicare, Veterans Administration, or other federal entitlement programs.

~~"Mental Retardation"~~ "Intellectual Disability" means that the person has, as determined by a PASRR level II evaluation, substantial limitations in functional ability due to significantly sub- average intellectual functioning related to an event occurring before the age of 18.

"MSQ" means the mental status questionnaire.

"MSQ score in high risk range" means the member's total weighted UCAT MSQ score is 12 or more which indicates a severe orientation-memory-concentration impairment, or a severe memory impairment.

"MSQ score at the high end of the moderate risk range" means the member's total weighted UCAT MSQ score is (10) or (11) which indicates an orientation-memory-concentration impairment, or a significant memory impairment.

"Nutrition high risk" means a total weighted UCAT Nutrition score is 12 or more which indicates the member has significant eating difficulties combined with poor appetite, weight loss, and/or special diet requirements.

"Progressive degenerative disease process that responds to treatment" means a process such as, but not limited to, Multiple Sclerosis (MS), Parkinson's Disease, Human Immunodeficiency Virus (HIV), or Acquired Immunodeficiency Syndrome (AIDS), that, untreated, systematically impairs normal body function which leads to acute illness and/or disability but that reacts positively to a medically prescribed treatment intervention (usually medication) which arrests or significantly delays the destructive action of the process.

"Social Resources high risk" means a total weighted UCAT Social Resources score is 15 or more, which indicates the member lives alone, combined within this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"ADL" means the activities of daily living. Activities of daily living are activities that reflect the member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,
(B) eating,
(C) dressing,
(D) grooming,
(E) transferring (includes getting in and out of a tub, bed to chair, etc.), none or very few social contacts and no supports in times of need.

SUBCHAPTER 5. SOONER SENIORS

317:50-5-2. Definitions

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

"ADL" means the activities of daily living. Activities of daily living are activities that reflect the member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,
(B) eating,
(C) dressing,
(D) grooming,
(E) transferring (includes getting in and out of a tub, bed to chair, etc.),
(F) mobility,
(G) toileting, and
(H) bowel/bladder control.

"ADLs score in high risk range" means the member's total weighted UCAT ADL score is 10 or more which indicates the member needs some help with 5 ADLs or that the member cannot do 3 ADLs at all plus the member needs some help with 1 other ADL.

"ADLs score at the high end of the moderate risk range" means member's total weighted UCAT ADL score is 8 or 9 which indicates the member needs help with 4 ADLs or the member cannot do 3 ADLs at all.

"Cognitive Impairment" means that the person, as determined by the clinical judgment of the LTC Nurse does not have the capability to think, reason, remember or learn

required for self-care, communicating needs, directing care givers and/or using appropriate judgment for maintenance of their own health or safety. The clinical judgment of cognitive impairment is based on MSQ performance in combination with a more general evaluation of cognitive function from interaction with the person during the UCAT assessment.

"Environment high risk" means member's UCAT Environment score is 25 which indicates in the UCAT assessor's clinical judgment, the physical environment is strongly negative or hazardous.

"Environment moderate risk" means member's UCAT Environment score is 15 which indicates in the UCAT assessor's clinical judgment, many aspects of the physical environment are substandard or hazardous.

"Health Assessment high risk" means member's UCAT health assessment score is 25 which indicates in the UCAT assessor's clinical judgment, the member has one or more chronic health conditions, whose symptoms are rapidly deteriorating, uncontrolled, or not well controlled and requiring a high frequency or intensity of medical care/oversight to bring under control and whose functional capacity is so limited as to require full time assistance or care performed daily, by, or under the supervision of professional personnel and has multiple unmet needs for services available only through the Sooner Seniors program or a Nursing Facility (NF) and requires NF placement immediately if these needs cannot be met by other means.

"Health Assessment low risk" means member's health assessment score is 5 which indicates, in the UCAT assessor's clinical judgment, the member has one or more chronic, stable, health conditions, whose symptoms are controlled or nearly controlled, which benefit from available, or usually available, medical treatment or corrective measures, and may have an unmet need for a service available only through the Sooner Seniors program or a Nursing Facility (NF) but is not likely to enter a NF if these needs are not met.

"Health Assessment moderate risk" means member's UCAT Health Assessment score is 15 which indicates in the UCAT assessor's clinical judgment, the member has one or more chronic changing health conditions, whose symptoms are fragile or worsening and require medical care/oversight, to bring under control or to maintain in a stable, controlled state and has multiple unmet needs for services available only through the Sooner Seniors program or a Nursing Facility (NF) and is likely to enter a NF if these needs are not met.

"IADL" means the instrumental activities of daily living.

"IADLs score in high risk range" means member's total weighted UCAT IADL score is 12 or more which indicates the member needs some help with 6 IADLs or cannot do 4 IADLs at all.

"Instrumental activities of daily living" means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

(A) shopping,
(B) cooking,
(C) cleaning,
(D) managing money,
(E) using a telephone,
(F) doing laundry,
(G) taking medication, and
(H) accessing transportation.

"Member Support high risk" means member's UCAT Member Support score is 25 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, Sooner Seniors and/or State Plan Personal Care services, very little or no support is available from informal and formal sources and the member requires additional care that is not available through Medicare, Veterans Administration, or other Federal entitlement programs.

"Member Support moderate risk" means member's UCAT Member Support score is 15 which indicates in the UCAT assessor's clinical judgment, excluding from consideration existing Ryan White CARE Act, Indian Health Service, Medicaid NF, Sooner Seniors and/or State Plan Personal Care services, support from informal and formal sources is available, but overall, it is inadequate, changing, fragile or otherwise problematic and the member requires additional care that is not available through Medicare, Veterans Administration, or other federal entitlement programs.

~~**"Mental Retardation"**~~ **"Intellectual Disability"** means that the person has, as determined by a PASRR level II evaluation, substantial limitations in functional ability due to significantly sub- average intellectual functioning related to an event occurring before the age of 18.

"MSQ" means the mental status questionnaire.

"MSQ score in high risk range" means the member's total weighted UCAT MSQ score is 12 or more which indicates a severe orientation-memory-concentration impairment, or a severe memory impairment.

"MSQ score at the high end of the moderate risk range" means the member's total weighted UCAT MSQ score is (10) or (11) which indicates an orientation-memory-concentration impairment, or a significant memory impairment.

"Nutrition high risk" means a total weighted UCAT Nutrition score is 12 or more which indicates the member has significant eating difficulties combined with poor appetite, weight loss, and/or special diet requirements.

"Progressive degenerative disease process that responds to treatment" means a process such as, but not limited to, Multiple Sclerosis (MS), Parkinson's Disease, Human Immunodeficiency Virus (HIV), or Acquired Immunodeficiency Syndrome (AIDS), that, untreated, systematically impairs normal body function which leads to acute illness and/or disability but that reacts positively to a medically prescribed treatment intervention (usually medication) which arrests or significantly delays the destructive action of the process.

"Social Resources high risk" means a total weighted UCAT Social Resources score is 15 or more, which indicates the member lives alone, combined with none or very few social contacts and no supports in times of need.

[OAR Docket #12-596; filed 5-10-12]

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

[OAR Docket #12-608]

RULEMAKING ACTION:
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RULES:
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317:50-1-4. [AMENDED]
(Reference APA WF # 11-29)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)
DATES:
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 8, 2012
Final adoption:
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
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N/A
ANALYSIS:
OHCA rules for the Medically Fragile Waiver are revised to clarify waiting list procedures for individuals who apply for services but cannot enter the waiver due to capacity limitations. The rules clarify that individuals applying for the waiver but unable receive services due to capacity limitations are placed on a waiting list and enter the waiver on a first on first off basis.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. MEDICALLY FRAGILE WAIVER SERVICES

317:50-1-4. Application for Medically Fragile Waiver services

(a) If waiver slots are available, the application process is initiated by the receipt of a UCAT, Part I or by an oral request for services. A written financial application is not required for an individual who is a SoonerCare member at the time of application. A financial application for Medically Fragile Waiver services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(1) All conditions of financial eligibility must be verified and documented in the case record. When current information is already available that establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(2) An individual residing in a NF or requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using OKDHS form 08MA011E, Assessment of Assets, when SoonerCare application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of SoonerCare long-term care eligibility is made.

(3) When SoonerCare application is being made, an assessment of resources must be completed if it was not completed when the individual entered the NF or began receiving waiver services. For applicants of the Medically Fragile waiver, those resources owned by the couple the month the application was made determines the spousal share of resources. If the individual applies for SoonerCare at the time of entry into the Medically Fragile Waiver, Form 08MA011E is not appropriate. However, the spousal share must be determined using the resource information provided on the SoonerCare application form and computed using OKDHS form 08MA12E, Title XIX Worksheet.

(b) **Date of application.** The date of application is the date the signed application is received or the date when the request for SoonerCare is made orally and the financial application form is signed later. The date of the oral request is noted above the date the form is signed.

(c) **Medically Fragile Waiver waiting list procedures.** Medically Fragile Waiver Program ~~"available capacity in the month"~~capacity is the number of ~~additional~~ members that may be enrolled in the Program ~~in a given month~~ without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. If available waiver capacity has been realized, requests for services are not processed as applications, but placed on a waiting list. As available capacity permits, the OHCA selects in chronological order (first on, first off) requests for services from the waiting list to forward for application processing. When waiver

capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended.

[OAR Docket #12-608; filed 5-10-12]

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

[OAR Docket #12-598]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. My Life, My Choice Waiver Services
317:50-3-4. [AMENDED]
(Reference APA WF # 11-13)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
OHCA rules for the My Life, My Choice Waiver are revised to clarify waiting list procedures for individuals who apply for services but cannot enter the waiver due to capacity limitations. The rules clarify that individuals applying for the waiver but unable receive services due to capacity limitations are placed on a waiting list and enter the waiver on a first on first off basis.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. MY LIFE, MY CHOICE

317:50-3-4. Application for My Life, My Choice Waiver services

(a) Within 60 days of completion of the Living Choice demonstration program, members choosing to stay in a home and community based setting may apply for transition into the My Life, My Choice Waiver. In order to transition from the Living Choice demonstration program to the My Life, My Choice Waiver, a recertification of eligibility is required. The member must meet all financial and medical eligibility requirements for recertification. The same application and eligibility processes used to certify members for SoonerCare long term care and Living Choice services will be reviewed to ensure any changes in member status will not affect eligibility for the My Life, My Choice Waiver. The original application and eligibility processes are set forth in 317:50-3-4(a)(1) through 317:50-3-6 below.

(1) The application process is initiated by the receipt of a UCAT, Part I or by an oral request for services. A written financial application is not required for an individual who is a SoonerCare member at the time of application. A financial application for My Life, My Choice Waiver services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(A) All conditions of financial eligibility must be verified and documented in the case record. When current information is already available that establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(B) An individual requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using OKDHS form MA-11, Assessment of Assets, when SoonerCare application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of SoonerCare long-term care eligibility is made.

(C) When SoonerCare application is being made, an assessment of resources must be completed if it was not completed when the individual entered the NF or began receiving home and community based services. For applicants of the My Life, My Choice waiver, those resources owned by the couple the month the application was made determines the spousal share of resources. If the individual applied for SoonerCare at the time of entry into the Living Choice Program, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the SoonerCare

application form and computed using OKDHS form MA-12, Title XIX Worksheet.

(2) The date of application is the date the signed application is received or the date when the request for SoonerCare is made orally and the financial application form is signed later. The date of the oral request is noted above the date the form is signed.

(b) **My Life, My Choice Waiver waiting list procedures.** My Life, My Choice Waiver Program ~~"available capacity in the month"~~capacity is the number of ~~additional~~ members that may be enrolled in the Program ~~in a given month~~ without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. If available waiver capacity has been realized, requests for services are not processed as applications, but placed on a waiting list. As available capacity permits, the OHCA selects in chronological order (first on, first off) requests for services from the waiting list to forward for application processing. When waiver capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended.

[OAR Docket #12-598; filed 5-10-12]

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

[OAR Docket #12-599]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Sooner Seniors Waiver Services
317:50-5-4. [AMENDED]
(Reference APA WF # 11-14)
AUTHORITY:
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of the Oklahoma Statutes; Medically Fragile 1915(c) Home and Community Based Services (HCBS) Waiver program as approved by The Centers for Medicare and Medicaid Services (CMS)
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
OHCA rules for the Sooner Seniors Waiver are revised to clarify waiting list procedures for individuals who apply for services but cannot enter the waiver due to capacity limitations. The rules clarify that individuals applying for the waiver but unable receive services due to capacity limitations are placed on a waiting list and enter the waiver on a first on first off basis.
CONTACT PERSON:
Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. SOONER SENIORS

317:50-5-4. Application for Sooner Seniors Waiver services

(a) Within 60 days of completion of the Living Choice demonstration program, members choosing to stay in a home and community based setting may apply for transition into the Sooner Seniors Waiver. In order to transition from the Living Choice demonstration program to the Sooner Seniors Waiver, a recertification of eligibility is required. The member must meet all financial and medical eligibility requirements for recertification. The same application and eligibility processes used to certify members for SoonerCare long term care and Living Choice services will be reviewed to ensure any changes in member status will not affect eligibility for the Sooner Seniors Waiver. The original application and eligibility processes are set forth in 317:50-5-4(a)(1) through 317:50-5-6 below.

(1) The application process is initiated by the receipt of a UCAT, Part I or by an oral request for services. A written financial application is not required for an individual who is a SoonerCare member at the time of application. A financial application for Sooner Seniors Waiver services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian or someone else acting on the applicant's behalf.

(A) All conditions of financial eligibility must be verified and documented in the case record. When current information is already available that establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(B) An individual requesting waiver services, or the individual's community spouse may request an assessment of resources available to each spouse by using OKDHS form MA-11, Assessment of Assets, when SoonerCare application is not being made. The individual and/or spouse must provide documentation of resources. The assessment reflects all countable

resources of the couple (owned individually or as a couple) and establishes the spousal share to be protected when subsequent determination of SoonerCare long-term care eligibility is made.

(C) When SoonerCare application is being made, an assessment of resources must be completed if it was not completed when the individual entered the NF or began receiving home and community based services. For applicants of the Sooner Seniors waiver, those resources owned by the couple the month the application was made determines the spousal share of resources. If the individual applied for SoonerCare at the time of entry into the Living Choice Program, Form MA-11 is not appropriate. However, the spousal share must be determined using the resource information provided on the SoonerCare application form and computed using OKDHS form MA-12, Title XIX Worksheet.

(2) The date of application is the date the signed application is received or the date when the request for SoonerCare is made orally and the financial application form is signed later. The date of the oral request is noted above the date the form is signed.

(b) **Sooner Seniors Waiver waiting list procedures.** Sooner Seniors Waiver Program ~~"available capacity in the month"~~capacity is the number of ~~additional~~ members that may be enrolled in the Program ~~in a given month~~ without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. If available waiver capacity has been realized, requests for services are not processed as applications, but placed on a waiting list. As available capacity permits, the OHCA selects in chronological order (first on, first off) requests for services from the waiting list to forward for application processing. When waiver capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended.

[OAR Docket #12-599; filed 5-10-12]

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

[OAR Docket #12-687]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:20-1-21. Duties of the Official Veterinarian [AMENDED]
325:20-1-22. Duties of the Racing Veterinarian [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
At the January 26, 2012 Commission Meeting, Mr. Constantin Rieger, Commission Executive Director, recommended that three rules [Rule 325:20-1-21, Duties of the Official Veterinarian; Rule 325:20-1-22, Duties of the Racing Veterinarian; and Rule 325:45-1-18, Taking of Samples] be amended to specify the approved actions of the Racing Veterinarian to take a blood sample from an injured horse in the case of a horse that suffers a catastrophic injury at a racetrack. The rest of the proposed amendments to Rule 325:20-1-22, Duties of the Racing Veterinarian, called for the trainer to witness the collection process if immediately available; it also stipulated any other licensed individual could act as the witness to the collection process if the trainer was not immediately available.
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 JUNE 25, 2012:

325:20-1-21. Duties of the Official Veterinarian

The Official Veterinarian must be a graduate veterinarian and licensed to practice in the State of Oklahoma. He or she shall recommend to the Stewards any horse that is deemed unsafe to be raced, or a horse that it would be inhumane to allow to race. He or she shall supervise the taking of all specimens for testing according to procedures approved by the Commission except in those cases provided for in Rule 325:20-1-22. He or she shall provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion, or contamination. All specimens collected shall be sent in locked and sealed cases to the laboratory. He or she shall have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure. He or she shall report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore. No Official Veterinarian shall directly treat or prescribe for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in an emergency or for the administration of a diuretic to facilitate the collection of a urine sample, either case of which shall be immediately

reported to the Stewards. The Official Veterinarian shall place horses on the Veterinarian's List and may remove from the List those horses which, in his/her opinion, can satisfactorily compete in a race.

325:20-1-22. Duties of the Racing Veterinarian

The Racing Veterinarian must be a graduate veterinarian and licensed to practice in the State of Oklahoma. The Racing Veterinarian shall be present in the paddock on the racing course, and at the starting gate during the saddling, the parade, and until the horses are dispatched from the gate for the race; and shall examine any horse when there is a question as to the physical condition of such a horse. He or she shall report any horse, which in their opinion is incapable of physically exerting its best effort to win, to the Stewards, who may scratch such horse from the race. The Racing Veterinarian shall examine any horse which appears in physical distress during the race, at the finish of the race; and s/he shall report such horse together with their opinion as to the cause of the distress to the Stewards and to the Official Veterinarian. No Racing Veterinarian shall directly treat or prescribe for any horse scheduled to participate during their term of appointment at any recognized meeting except in an emergency. The Racing Veterinarian has the authority to treat any horse in the event of an emergency, accident or injury; and s/he is authorized to humanely destroy any horse which in their opinion is so seriously injured that it is in the best interests of racing to so act; and every horse owner and Trainer participating in Commission-licensed racing does consent to the humane destruction of such animal. In the case of a horse which has suffered a catastrophic injury, the Racing Veterinarian may obtain a blood sample from the injured horse prior to taking any humane actions necessary. If the trainer is immediately available, he or she may witness the collection process. If the trainer is not immediately available to witness the collection process, any other licensed individual shall act as the witness to the collection process.

[OAR Docket #12-687; filed 5-22-12]

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

[OAR Docket #12-688]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:45-1-18. Taking of samples [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
At the January 26, 2012 Commission Meeting, Mr. Constantin Rieger, Commission Executive Director, recommended that three rules [Rule 325:20-1-21, Duties of the Official Veterinarian; Rule 325:20-1-22, Duties of the Racing Veterinarian; and Rule 325:45-1-18, Taking of Samples] be amended to specify the approved actions of the Racing Veterinarian to take a blood sample from an injured horse in the case of a horse that suffers a catastrophic injury at a racetrack. **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 JUNE 25, 2012:

325:45-1-18. Taking of samples

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

(1) Blood shall be taken only by the Official Veterinarian except as otherwise provided in the *Rules of Racing*.

(2) In the case of a horse which has suffered a catastrophic injury, the Racing Veterinarian may obtain a blood sample from the injured horse prior to taking any humane actions necessary. If the trainer is immediately available, he or she may witness the collection process. If the trainer is not immediately available to witness the collection process, any other licensed individual shall act as the witness to the collection process.

(~~2~~3) Urine, other samples or specimens shall be taken under the direction of the Official Veterinarian or persons appointed or assigned by the Official Veterinarian for such purposes. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of thirty (30) minutes after the race before a urine sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the Trainer of the horse being tested or his/her authorized representative or employee, and may be witnessed by the Owner, Trainer, or other licensed person designated by them. Such samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may

direct. All required samples shall be in the custody of the Official Veterinarian, his/her assistants, or other persons approved by the Official Veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. Except for 1) the decanting of the sample by the Official Veterinarian or other person authorized by the Official Veterinarian to do so, 2) for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample, and 3) or in the process of analysis, no person shall break the seal of, remove, or otherwise attempt to alter any sample required to be collected by this Chapter.

(~~3~~4) The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

(~~4~~5) The fact that purse money has been distributed shall not be deemed a finding that no chemical substance has been administered in violation of the provisions of this Chapter to the horse earning such purse money.

(~~5~~6) The decanting of a blood sample -- at the Trainer's/Owner's option -- may be witnessed by the Trainer/Owner of the horse being tested or by his/her authorized representative or employee or other licensed person designated by the Trainer/Owner. The Trainer/Owner exercises his/her option to witness the decanting of a blood sample by making himself/herself or authorized representative or employee or other licensed person designated by the Trainer/Owner present at the time of the decanting of the blood sample. If not present at the time of decanting, the Trainer/Owner or authorized representative or employee or other licensed person designated by the Trainer/Owner waives the right to witness the decanting process.

[OAR Docket #12-688; filed 5-22-12]

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

[OAR Docket #12-689]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:75-1-15. Distribution of funds for Oklahoma-Bred pari-mutuel races [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
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Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
One of the eight statutory purposes for use of the Oklahoma Breeding Development Fund Special Account is to provide monies for equine research through state institutions accredited for the same [Title 3A, Oklahoma Horse Racing Act, § 208.3(A)(5)]. The Commission has an annual contract with the Oklahoma Animal Disease Diagnostic Laboratory at Oklahoma State University to provide funding for the Veterinary Medical Diagnostic Program (Necropsy Study). The annual $50,000 contract provides funding for the Necropsy Study to study and evaluate the cause of the catastrophic injury and provide written findings and an annual report. The funding for the Necropsy Study is derived from a percentage of the unclaimed ticket proceeds deposited into the Oklahoma Breeding Development Fund Special Account. With the diminishing revenues of unclaimed ticket proceeds in the past two years, the Commission's Oklahoma-Bred Advisory Council recommended that the current share of funding to Equine Research be increased from 5% to 15% to continue funding for the Necropsy Study with Oklahoma State University.
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 JUNE 25, 2012:

325:75-1-15. Distribution of funds for Oklahoma-Bred pari-mutuel races

(a) The distribution of monies from the Oklahoma Breeding Development Fund Special Account for any race meeting except as provided in (b) and (c) of this Section shall be as follows:

(1) Fifty percent (50%) to purse supplements for owners of winning accredited Oklahoma-Bred horses in certain races, as established in 325:75-1-14;

(2) Thirty-four percent (34%) to the Breeders of winning accredited Oklahoma-Bred horses for Broodmare Awards, except for an accredited Thoroughbred classified as Oklahoma—foaled, will receive one-half ($\frac{1}{2}$) of this designated award. The remaining or undistributed monies will be held in trust for Stallion Owners to be awarded in the following manner: At the conclusion of the calendar year the top ten accredited Thoroughbred stallions will be determined and ranked by the amount of the Oklahoma-Bred money earned, and those stallions will receive a Stallion Bonus Award from the undistributed trust based on the stallion's percentage of earnings of the top ten accredited Thoroughbred stallions' total earnings.

(3) Sixteen percent (16%) to the owners of the sires of winning accredited Oklahoma-Bred horses for Stallion Awards.

(b) At any mixed breed race meeting, no less than ten percent (10%) of the Oklahoma Breeding Development Fund Special Account generated at said race meeting shall be available for distribution as authorized in (a) or (b) of this Section for stakes races and/or feature races as authorized by the Commission in 325:75-1-14 at the track where such funds were generated. Any distribution contemplated herein shall be made available on a pro rata basis using a per breed ratio based upon the number of races per breed specified in the current Organization License for the race track. The distribution of breakage and unclaimed ticket proceeds generated outside of race meetings and designated for use as purse supplements or awards at a race track each year shall be divided between race meetings and among participants in any Mixed Breed Race Meeting on the same basis, by using a per breed ratio based upon the number of races per breed specified in the race track's current Organization License Order.

(c) At any straight Thoroughbred race meeting, no less than ten percent (10%) of the Oklahoma Breeding Development Fund Special Account generated at said race meeting shall be made available for distribution as authorized in (c) of this Section for stakes races and/or feature races as authorized by the Commission in 325:75-1-14 at the track where such funds were generated.

(d) Excepting feature races as authorized by the Commission in 325:75-1-14, the official order-of-finish distribution amounts authorized in (a), (b), and (c) of this Section shall be as follows:

(1) Fifty percent (50%) total to the winning accredited Oklahoma-Bred horse and the accredited Oklahoma-Bred broodmare and sire of such horse, if any as prescribed in subsections (a), (b), and (c) of this section;

(2) Thirty percent (30%) total to the place accredited Oklahoma-Bred horse and the accredited Oklahoma-Bred broodmare and sire of such horse, if any as prescribed in subsections (a), (b), and (c) of this section; and

(3) Twenty percent (20%) total to the show accredited Oklahoma-Bred horse and the accredited Oklahoma-Bred broodmare and sire of such horse, if any as prescribed in subsections (a), (b), and (c) of this section.

(e) The official order of finish distribution amounts authorized by the Commission for feature races, if any, as established in 325:75-1-14, shall be determined by the Commission.

(f) As approved by the Commission, ~~five percent (5%)~~fifteen percent (15%) of the unclaimed ticket proceeds shall be available to the Commission for distribution for equine research.

[OAR Docket #12-689; filed 5-22-12]

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

[OAR Docket #12-702]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 1. General Provision
340:2-1-8 [AMENDED]
Part 4. Alcohol and Drug Testing Applicable to OKDHS Employees and Applicants
340:2-1-42 [AMENDED]
(Reference WF 12-03)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; HB 2033; Section 554 of Title 40 of the Oklahoma Statutes; and Standard 257:20-1-1 of Chapter 62 of Title 74 of the Oklahoma Statutes.
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed amendments to Chapter 2 Subchapter 1 amend the rules to: (1) remove an obsolete definition, add new definitions, and amend a definition as enacted by the Oklahoma State Legislature in House Bill (HB) 2033; and (2) make minor changes to clarify language.

OAC 340:2-1-8 is amended to add the words "members of the employee's household or comparably situated persons," for clarity in accordance with Standard 257:20-1-1 of Chapter 62 of Title 74 of the Oklahoma Statutes.

OAC 340:2-1-42 is amended, as required by HB 2033, to establish definitions of "for-cause" and "post-accident testing," eliminate the definition of "reasonable suspicion," and amend the definition of "review officer."
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 1. GENERAL PROVISIONS

340:2-1-8. Employee ethics and other employment

(a) **Other employment, prohibition against use of position for personal gain, and avoidance of conflicts of interest.** An employee is subject to appropriate corrective or disciplinary action if the employee fails to comply with the Rules of the Ethics Commission. [74 O. S. Ch. 62]

(1) Under these provisions, every employee must, during office hours, devote full time and attention, to Oklahoma Department of Human Services (OKDHS) business. An employee may not use:

(A) office hours for private gain, including activities involved in a business enterprise, such as livestock or crop farming, sale of real estate, or other business which involves self-employment; nor

(B) paid time, state offices, telephones, supplies, and equipment to further the programs or activities of private, non-profit organizations, even when the objectives of the private organization are compatible with those of OKDHS. Exceptions may occur as authorized by the division director and only for activities in which OKDHS can legitimately expend agency dollars, for example, when OKDHS is a member of an organization or in situations where OKDHS has responsibility as a member of a board or commission by law or by appointment of the executive or legislative branch of government.

(2) An employee may accept other employment outside of the employee's OKDHS regular office hours provided such employment is approved in advance and does not interfere with or is not in conflict with the employee's work within OKDHS.

(3) It is vitally important that an OKDHS employee avoid actual and perceived conflicts of interest in activities, such as employment with a provider who contracts with OKDHS. The employment or other activities of a spouse or other close family member may create the appearance of a conflict of interest and cause members of the general public to question the objectivity of OKDHS decision-making.

(4) An OKDHS employee may not be employed by another state agency or any provider contracting with OKDHS without the prior written approval of the employee's division director.

(b) **Related employees.** Placement in a position that results in relatives, members of the same household, or comparably situated persons occupying positions within a division, office, facility, or area where one relative occupies a senior administrative position must be approved in writing by the OKDHS Director or designee. OKDHS reserves the right to make placements and work assignments of personnel as necessary to eliminate or prevent situations of this nature. OKDHS policy prohibits, unless waived by the OKDHS Director or designee, the employment of any person in a position that results in:

(1) immediate supervision by a relative, a member of the employee's household, or a comparably situated person. Relative is defined as spouse, child, parent, stepparent, parent-in-law, grandchild, grandparent, brother, sister, stepchild, brother-in-law, sister-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, first cousin, a member of the employee's household, or comparably situated persons, or foster relationship;

(2) as defined in (b)(1) of this Section, placement in a position within a relative's line of authority or chain of command; or

(3) two or more relatives reporting to the same immediate supervisor, as defined in (b)(1) of this Section.

(c) **Processing applications for OKDHS benefits or services on behalf of an employee's relative or for persons living in the employee's home.** In performing their official duties, employees are impartial and perform their duties in a manner that maintains impartiality. Employees who engage in improper client relationships, as referenced in this Section, are subject to appropriate corrective or disciplinary action.

(1) An employee may not:

(A) process, certify, or approve an application for benefits, payments, or services for any relative as defined in subsection (b) of this Section, or for any unrelated person living in the employee's household. This includes a relationship to a relative that has been terminated by death, divorce, or other reasons; nor

(B) act as an authorized ~~representatives~~representative for clients receiving OKDHS program benefits without the specific written approval of the local administrator after a determination has been made that no one else is available to serve.

(2) In those offices with limited staff, it may be necessary for an employee to take an application for a person(s) listed in subsection (b) of this Section. The employee cannot certify the person(s) for benefits, payments, or services.

(d) **Client relationships.** In keeping with the mission of OKDHS to serve and protect clients, OKDHS employees assist clients in developing independence and self-sufficiency while recognizing their rights. A client is defined as a program applicant, recipient, patient, resident of an OKDHS facility, and any other person receiving or making application for OKDHS services. Rights of clients include, but are not limited to:

(1) privacy and the expectation that information obtained by OKDHS employees in the course of their duties is held confidential;

(2) treatment that conveys dignity, respect, courtesy, fairness, and good faith;

(3) expectation of high standards of personal conduct from OKDHS employees;

(4) freedom from discrimination on the basis of race, gender, age, color, creed, national origin, religion, or disability;

(5) freedom from sexual harassment;

(6) freedom from coercion to give gifts or services of value; and

(7) freedom from interference by OKDHS employees with regard to matters of individual belief or faith.

PART 4. ALCOHOL AND DRUG TESTING APPLICABLE TO OKDHS EMPLOYEES AND APPLICANTS

340:2-1-42. Definitions

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

"Alcohol" means ethyl alcohol or ethanol.

"Alcohol test" means a breath or saliva test administered for the purpose of determining the presence or absence of alcohol or its metabolites in a person's bodily tissue, fluids, or products. Testing of Oklahoma Department of Human Services (OKDHS) employees is conducted and evaluated by qualified persons and facilities licensed by the Oklahoma State Department of Health (OSDH) in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. §§ 551 through ~~565~~563.

"Applicant" means any person making application for initial hire, reinstatement, or transfer from a state agency, for any position within OKDHS, or for transfer, demotion, promotion, or reinstatement into the position of direct care specialist. OKDHS, upon a conditional offer of employment, requires the applicant to undergo drug testing.

"Conditional offer of employment" means an offer made to an applicant for employment with OKDHS, conditioned upon successful completion of a drug test prior to the start of employment.

"Confirmation test" means an alcohol or drug test, conducted in accordance with Drug and Alcohol Testing Rules, as amended, of OSDH, per OAC 310:638, to substantiate the results of a prior alcohol or drug test. For urine or hair, the test is performed on the same sample or a split sample.

"Direct care staff" means any employee, whether permanent, classified, unclassified, probationary, or temporary, in the job family of direct care specialist.

"Drug" means any controlled substance approved for hair or urine testing by OSDH, including amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of these substances.

"Drug test" means a hair or urine test administered for the purpose of determining the presence or absence of a drug or its metabolites in a person's bodily tissue, fluids, or products. Testing conforms to the Drug and Alcohol Testing Rules, as amended, adopted by OSDH, per OAC 310:638. The testing of OKDHS employees is conducted and evaluated by qualified persons and facilities licensed by OSDH in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 through ~~565~~563]

"Employee" means anyone employed by OKDHS, whether permanent, classified, unclassified, probationary, or temporary.

"For-cause testing" means that OKDHS may request or require an employee to undergo drug or alcohol testing at any time it reasonably believes that the employee may be under the influence of drugs or alcohol, including but not limited to:

(A) drugs or alcohol on or about the employee's person or in the employee's vicinity;

(B) conduct on the employee's part that suggests impairment or influence of drugs or alcohol;

(C) a report of drug or alcohol use while at work or on duty;

(D) information that an employee has tampered with drug or alcohol testing at any time;

(E) negative performance patterns; or

(F) excessive or unexplained absenteeism or tardiness.

"Post-accident testing" means OKDHS may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or property or equipment owned by the state has been damaged. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation.

"Random testing" means an objective mechanism for selecting direct care employees for alcohol and drug testing that results in an equal probability any employee from a group of direct care employees will be selected.

~~**"Reasonable suspicion"** means a belief an employee is using or has used alcohol or drugs in violation of this policy. Reasonable suspicion is drawn from specific, objective, and articulable facts and reasonable inferences drawn from those facts in light of experience and training, and may be based upon but not limited to:~~

~~(A) documented observations, such as the physical symptoms or manifestations of being under the influence of alcohol or drugs while at work or on duty or the direct observation of alcohol or drug use while at work or on duty;~~

~~(B) a report of alcohol or drug use while at work or on duty, provided by reliable and credible sources and which has been independently corroborated;~~

~~(C) evidence an employee has tampered with an alcohol or drug test as required by this policy; or~~

~~(D) evidence an employee is involved in the use, possession, sale, solicitation, or transfer of illegal drugs while on duty, on OKDHS property, or operating state-owned vehicles, machinery, or equipment.~~

"Review officer" means a ~~physician certified pursuant to Standards for Workplace Drug and Alcohol Testing Act [40 O.S. § 551 through 565] who reviews positive alcohol and drug test results and contacts each person having a positive alcohol or drug test to determine whether there is a medical reason for the positive test result~~person, qualified by the Oklahoma State

Board of Health, who is responsible for receiving results from a testing facility which have been generated by an employer's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information.

[OAR Docket #12-702; filed 5-23-12]

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

[OAR Docket #12-757]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Client Services
Part 3. Service Provisions
OAC 340:100-5-35 [AMENDED]
(Reference APA WF 12-02)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution.
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March 27, 2012
Submitted to House:
March 27, 2012
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May 10, 2012
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 22, 2012.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Chapter 100 Subchapter 5 amend the rule to: (1) allow for exceptions for members of the Homeward Bound Waiver; and (2) to clarify the monitoring requirements for non-residential Habilitation Training Specialist (HTS) services.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 5. CLIENT SERVICES

PART 3. SERVICE PROVISIONS

340:100-5-35. Non-Residential Habilitation Training Specialist (HTS) services

(a) **Applicability.** Habilitation Training Specialist (HTS) services per OAC 317:30-5-482 and authorized per OAC 317:40-5-110 or ~~111~~OAC 317:40-5-111 and OAC 340:100-3-33~~. This policy~~ and applies to nonresidential HTS services provided to service recipients not receiving community residential or group home services per OAC 340:100-5-22.1 or OAC 340:100-6.

(b) **General information.**

(1) Non-residential HTS services are authorized:

(A) as a result of needs identified by the team and informed selection by the service recipient;

(B) only during periods when staff are engaged in purposeful activity ~~which~~that directly or indirectly benefits the service recipient;

(C) when directed toward the development or maintenance of a skill in order to achieve a specifically stated outcome; and

(D) when the service provided is not a function that the parent would provide for the individual without charge as a matter of course in the relationship among members of the nuclear family when the member resides in a family home.

(2) Non-residential HTS services are not authorized when a service recipient is in need of:

(A) sleep time supervision; or

(B) assistance responding to emergencies, in which ~~cases they must select~~case a residential alternative per OAC 317:40-1-2 must be selected, unless unpaid natural supports are available to meet these needs and identified in the Individual Plan (Plan).

(3) Non-residential HTS services are not authorized for:

(A) services provided in the home of the HTS, unless the service recipient and the HTS reside in the same home;

(B) employment supports ~~which~~that are provided per OAC 317:40-7;

(C) respite services provided per OAC 317:30-5-517;

(D) homemaker services provided per OAC 317:30-5-537;

(E) adult day services provided per OAC 317:40-5-113; or

(F) child care services.

(4) In accordance with OAC 340:100-3-33.1, services must be provided in the most cost effective manner. When the need for HTS services is expected to continue to exceed an average of nine hours daily, cost effective community residential services must be considered and requested per OAC 317:40-1-2. For adults, continuation of non-residential services in excess of nine hours per day

for more than one plan of care year will not be authorized except:

(A) when needed for members who receive services through the Homeward Bound Waiver;

(B) when determined by the division administrator or designee to be the most cost effective option; or

(C) as a transition period of 120 days or less to allow for identification of and transition to a cost effective residential option. Members who do not wish to receive residential services will be assisted to identify options that meet their needs within an average of nine hours daily.

(5) Non-residential HTS providers may not perform any job duties associated with other employment, including on call duties~~,~~ at the same time they are providing HTS services.

(6) Non-residential HTS services are limited to no more than 40 hours per week when the HTS resides in the same home as the service recipient. If additional hours of service are needed, they must be provided by someone living outside the home. Exceptions may be authorized when needed for service recipients who receive services through the Homeward Bound Waiver.

(7) When the service recipient also receives Homemaker services or is out of the home for school, work, adult day services, or other non-HTS supported activities, the total number of hours of non-residential HTS, Homemaker, and hours away from the home cannot exceed 12 hours per day, unless an exception is granted per OAC 317:40-5-110.

(c) **Service location.**

(1) Non-residential HTS services are provided in:

(A) the service recipient's home; or

(B) the community.

(2) Non-residential HTS services are not provided in:

(A) a school;

(B) a hospital;

(C) a nursing facility;

(D) an ~~ICF/MR~~intermediate care facility for persons with intellectual disabilities (ICF/ID);

(E) an unlicensed facility-based program;

(F) a private home except the service recipient's home or the home of a relative, unless the home has been approved per OAC 317:40-5-40; or

(G) the service recipient's employment setting or any other employment setting.

(d) **Backup plan.** Prior to service delivery, an emergency backup plan must be developed and specify how the service recipient's needs will be met if paid staff are unavailable. The emergency backup plan is included in the ~~Individual Plan (~~Plan~~)~~.

(e) **Service requirements.**

(1) The provider:

(A) implements the service recipient's Plan;

(B) promotes community inclusion;

(C) promotes the service recipient's health and welfare, increased independence, ~~and~~ self-sufficiency; and

(D) cooperates in securing alternative services while continuing to provide services when the service recipient, legal guardian, or provider wishes to discontinue services until the Team confirms all essential services are in place.

(2) The provider develops and maintains written policies and procedures that are consistent with Oklahoma Department of Human Services (OKDHS) rules and govern all aspects of service provision, with the exception of services provided per OAC 317:40-9-1.

(A) Provider agency policies are made available to each service recipient, service recipient's parent(s), legal guardian, advocate, provider agency staff, and OKDHS.

(B) Provider agency policies and procedures include, but are not limited to:

(i) service recipient rights protection;

(ii) services provided;

(iii) admission and discharge criteria;

(iv) grievance procedures;

(v) prevention and reporting of abuse, neglect, and exploitation;

(vi) confidentiality;

(vii) emergency management;

(viii) fees paid by service recipient;

(ix) health and safety precautions;

(x) safeguarding service recipient funds;

(xi) medication administration; and

(xii) incident reporting.

(3) The provider agency designates one person who, in the absence of the agency administrator, is responsible for the administration of the agency and is empowered to act on behalf of the provider agency, with the exception of services provided per OAC 317:40-9-1.

(4) The provider agency is responsible for recruitment, screening, training, and supervision of staff or volunteers providing direct services, and ensuring direct support staff:

(A) are not supervised by a relative or person living in the staff's home. A relative includes wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any such person with whom the employee shares a foster relationship;

(B) who provide backup services are available and have received training per OAC 340:100-3-38;

(C) are at least 18 years of age;

(D) are present as specified in the Plan and as authorized by the service recipient's Plan of Care;

(E) are physically able and mentally alert to carry out the job duties ~~of the job~~;

(F) implement and follow the service recipient's Plan; and

(G) do not take the service recipient to visit staff's home, unless the Team has provided advance written

approval ~~in advance~~ of any visit with the purpose specified in the Plan.

(5) The provider agency ensures supervision, guidance, and oversight of all aspects of programming associated with receipt of non-residential HTS supports.

(A) The ~~Program Coordination Staff~~program coordination staff (PCS) must:

(i) ensure staff are familiar with ~~the~~Plan requirements ~~of the Plan~~;

(ii) make supervisory visits to the service site. The PCS makes a minimum of one monitoring visit per:

(I) month, ~~based on the need for supervision of staff and oversight of the program~~when a service recipient receives an average of 30 or more hours of HTS weekly; or

(II) quarter based on calendar year quarters, when a service recipient receives an average of 29 or fewer hours of HTS weekly;

(iii) supervise direct contact staff to promote achievement of Plan outcomes ~~in the Plan~~;

(iv) ensure staffing levels meet the requirements of the service recipient's Plan, with staff trained per OAC 340:100-3-38;

(v) ensure records are maintained ~~according to DDSD community records~~ per OAC 340:100-3-40;

(vi) assist the Developmental Disabilities Services Division (DDSD) case manager as requested to prepare for and implement the Plan and its revisions per OAC 340:100-5-50 through OAC 340:100-5-58;

(vii) ensure applicable OKDHS and Oklahoma Health Care Authority (OHCA) rules are followed;

(viii) complete necessary training per OAC 340:100-3-38; and

(ix) have a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities, or full-time equivalent experience in a supervisory position, unless this requirement is waived in writing by the DDSD director or designee.

(B) Provider agencies assign PCS caseloads per OAC 340:100-5-22.1.

(6) Staff~~,~~ when assisting a service recipient with bathing or showering, must ensure the water temperature is safe and comfortable for the service recipient. The requirements of this paragraph are enforced even when an anti-scald device is used. The staff:

(A) tests the water temperature by touch or with a thermometer designed to test hot liquids, before the service recipient enters the water. The water must be determined safe and comfortable for the service recipient, not merely comfortable for the staff.

(B) is trained by his or her employer in the unique needs of each service recipient, including tolerance to water temperature and bathing or showering needs; and

(C) does not leave a service recipient who is unable to attend to safety considerations, alone in the bath or shower.

[OAR Docket #12-757; filed 5-25-12]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 110. LICENSING SERVICES

[OAR Docket #12-758]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. Licensing Services - Child Care
340:110-1-6 [AMENDED]
340:110-1-8.3 [AMENDED]
340:110-1-8.4 through 340:110-1- 8.10 [NEW]
340:110-1-9 through 340:110-1-9.1 [AMENDED]
340:110-1-9.3 [AMENDED]
340:110-1-10.1 [AMENDED]
340:110-1-13 [AMENDED]
340:110-1-15 [AMENDED]
Part 3. Licensing Services - Residential Care and Agencies
340:110-1-44 [AMENDED]
340:110-1-46 [AMENDED]
340:110-1-47.2 [AMENDED]
340:110-1-54 through 340:110-1-54.1 [AMENDED]
(Reference WF 12-01)
AUTHORITY:
Commission for Human Services; Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Child Care Facility Licensing Act, Section 401 et seq. of Title 10 of the Oklahoma Statutes.
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None requested
Adoption:
March 27, 2012
Submitted to Governor:
March 27, 2012
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Submitted to Senate:
March 27, 2012
Gubernatorial approval:
May 10, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 22, 2012.
Final adoption:
May 22, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Chapter 110 Subchapter 1 amend the rules to: (1) clarify Oklahoma Child Care Services (OCCS) policy and practice and assist with the consistent enforcement of licensing requirements; (2) clarify grievance procedures; (3) revise the separation of criteria for the quality rating and improvement system from the approval process and procedures; and (4)

revise and increase quality criteria for facilities participating in the differential quality rating system.

CONTACT PERSON:

Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. LICENSING SERVICES - CHILD CARE

340:110-1-6. Application process

(a) **Application.** The licensing staff provides ~~the appropriate application~~Form 07LC004E, Request for License - Child Care Facility, to persons interested in licensure.

(1) If requested, a family child care home application is filed and a license issued to a caregiver and spouse. References are obtained for both persons, and both must demonstrate compliance with requirements. A primary caregiver must be identified and meet all primary caregiver requirements.

(2) Proof of ownership must be provided according to Oklahoma Department of Human Services (OKDHS) Appendix L-7, Ownership Proof Chart, for a:

(A) child care center; or

(B) family child care home.

(3) Care may be provided in a location other than the caregiver's primary residence.

(4) Contact is made by phone every two months and documented on Form 07LC080E, Licensing Services Supplemental Information, when no permission to operate has been granted.

(b) **Permission to Operate.** The facility may be granted permission to operate on application status~~. If~~if the licensing staff determines that an applicant is temporarily unable to comply with all licensing requirements, but the services are needed and the non-compliance does not place children at risk of imminent harm. These situations are staffed with the regional programs manager for permission to operate. Permission to operate cannot exceed 30 days.

(c) **Child care provider contract.** The licensing staff advises the child care facility of the opportunity to contract with OKDHS for the care of children whose families receive subsidized child care benefits, per OAC 340:40-13-5. The licensing staff documents that a child care contract promotional flyer is provided to the facility with contact information for the county child care liaison.

(d) **Reopening a family child care home case.** If a family child care home has been closed for less than one year and had a record of compliance prior to closure, the licensing staff obtains a new application and may recommend license issuance after one compliant monitoring visit, utilizing previous references. Prior to issuance of the license, background investigations must be conducted per OAC 340:110-1-8.1.

(e) **Reopening a child care center, part-day children's program, or school-age program.** If a child care center has been closed and the same owner wishes to reopen, a new application must be completed.

(1) Fire and health inspections completed within the last 12 months may be used, unless concerns exist.

(2) If the facility has been closed less than one year:

(A) previously obtained director references may be used;

(B) background investigations must be conducted per OAC 340:110-1-8.1; and

(C) with a record of compliance prior to closure, the licensing staff may recommend license issuance after one compliant monitoring visit.

(f) **Computer checks on license applicants.** Computer checks to identify prior involvement with OKDHS are completed on required persons per OAC 340:110-1-8.1(g).

(g) **Family child care homes approved to provide foster care.** A caregiver approved to provide kinship foster care may be licensed as a family child care home. No other foster care placement will be approved. The caregiver cannot be licensed if approved for therapeutic foster care per OAC 340:75-7-19. The approval for dual service is made by the licensing supervisor in writing prior to each child placement, based upon the recommendation of the licensing staff and foster care staff of the child-placing agency. When a joint consensus is not achieved, either division may request a review by the dual approval committee for a final decision. The decision for approval is:

(1) based upon the number, ages, and specific needs of children potentially eligible for child care and foster care and receipt of a written agreement from the caregiver stating the individual(s) from whom the child was removed will not be present during the hours of child care;

(2) documented in the case record; and

(3) reviewed with the provider and foster care worker at least once per year or more often if concerns exist.

(h) **Withdrawal of application.** If a child care facility applicant wishes to withdraw the application prior to issuance of an initial permit the licensing staff:

(1) documents this request on Form 07LC080E, Licensing Services Supplemental Information;

(2) confirms that no children are in care; and

(3) may close the case, unless negative action is warranted.

340:110-1-8.3. Certification of facilities to receive a differential quality rating and improvement level

(a) **Purpose.** The differential quality rating and improvement system was developed to improve the overall quality of care by increasing the ~~training~~professional development and education of child care providers and to provide the public with a method to evaluate child care. Certification is required for a provider to receive a differential quality rate for children whose

families are receiving subsidized child care benefits through the Oklahoma Department of Human Services (OKDHS).

(b) **Criteria for child care ~~center~~centers and homes certification levels.** The ~~levels of certification~~ quality rating and improvement criteria for child care ~~centers~~facilities are contained in ~~this subsection~~ OAC 340:110-1-8.4 through OAC 340:110-1-8.10.

(c) **Application process.** The following application process is required for certification.

(1) **Criteria for one star centers and homes.** A ~~center~~facility operating on a permit~~,~~or license~~, or provisional license~~ is automatically designated as a one star ~~center~~facility.

(2) **Criteria for one star plus center and home facilities.** To be approved as a one star plus ~~center~~facility, the owner must complete and submit Form 07LC025E, Request for Child Care Center Star Certification, or Form 07LC027E, Request for Family Child Care Home Star Certification, and meet all ~~the requirements~~criteria described in ~~(A) through (G) of this paragraph~~(b). ~~The center may operate on one star plus status for a total of 24 months, which are not required to run consecutively. After 24 months of one star plus certification, the center must be approved for a higher star level, approved for an extension of time to comply, or return to one star status. If the new criteria cannot be met at 24 months, a facility may request an extension of time to comply as set forth in (g) of this Section.~~

~~(A) **Licensing status and compliance.** The program must have a license, provisional license, or permit. The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed. If there are two or more incidents of numerous, repeated, or serious non-compliance with applicable licensing requirements or one serious incident resulting in injury or imminent risk of harm, the request may be denied. The licensing record from the applicant's previous licenses, if any, is considered. Numerous, repeated, and serious non-compliance as referenced in OAC 340:110-1-9.3 are considered when approving or denying star certification.~~

~~(B) **Administrative.**~~

~~(i) The director evaluates staff in writing at least annually.~~

~~(ii) All staff have access to licensing requirements.~~

~~(C) **Director.**~~

~~(i) The director must have documentation of 30 hours of job related training within the last 12 months prior to application.~~

~~(ii) If a new director is hired, the director must have documentation of 30 clock hours of job related training within the last 12 months prior to employment. If the new director does not have the 30 clock hours of training, the facility is required to submit a written plan to licensing staff for correcting the violation within 90 days of the new director's hire date.~~

~~(iii) In subsequent years, directors must have documentation of 30 clock hours of job related training per employment year.~~

~~(iv) A director may count a total of six hours of in-service training each year. In-service training includes videos and informal on-site staff training. Reading does not count for stars training.~~

~~(v) A person is not counted as a center master teacher, director, or primary caregiver at more than one facility unless the facilities are programs that do not operate concurrently at any given time.~~

~~(vi) The director has a written professional development plan on file at the center. The professional development plan is reviewed annually and updated as needed.~~

~~(D) **Learning environment.**~~

~~(i) The center has and follows current weekly lesson plans appropriate for the developmental needs of all groups of children. Current lesson plans are readily available in each classroom.~~

~~(ii) Space for children two years of age and older is arranged in a minimum of five well defined and equipped interest areas in each classroom to facilitate a variety of activities, which must include block building, dramatic play, manipulative play, art, and book reading. Teachers read to children a minimum of 15 minutes each day.~~

~~(E) **Staff.**~~

~~(i) At application, center staff employed at the facility for at least 12 months and counted toward meeting the staff child ratio must have 20 clock hours of job related training per employment year. At initial application, training may be counted if training was obtained within the last 12 months or within the staff's employment year.~~

~~(ii) After initial approval for certification, the training criteria of 20 clock hours of job related training must be met within the staff's employment year.~~

~~(iii) The training requirement applies to part time staff and permanent substitutes who have worked at the child care center more than a total of 40 hours. Staff persons who perform only auxiliary duties, such as cooking, transportation, or maintenance, are exempt from this training requirement.~~

~~(iv) Staff may count a total of six hours of in-service training each year. In-service training includes videos and informal on-site staff training. Reading does not count for stars training.~~

~~(v) All full time staff have a written professional development plan on file at the center. The professional development plan is reviewed annually and updated as needed.~~

~~(F) **Parent involvement.** The center involves parents in the activities described in (i) through (viii) of this subparagraph.~~

~~(i) A system is established and maintained for sharing with and communicating to parents the happenings, activities, and related issues about a child's physical and emotional state.~~

~~(ii) Parents are welcomed into the center at all times, for example, to eat lunch with a child, observe, or volunteer in the classroom.~~

~~(iii) Individual parent conferences are arranged for and documented at least annually and at other times as needed to discuss children's progress, accomplishments, and challenges and set goals together. Documentation of parent conferences is maintained with the child's records.~~

~~(iv) There is a parent resource area with books, pamphlets, and articles on parenting that is accessible and available to parents.~~

~~(v) At least two parent meetings with guest speakers or special events are held each year, for example, open house, brown bag lunch, family pot luck dinners, and children's programs.~~

~~(vi) Parents are informed of the center's program by two of these methods: bulletin board, newsletter, parent handbook, Web site specific to each center location, or e-mails.~~

~~(vii) Parents participate in program and policy development through board involvement and planning meetings, or are given an opportunity to complete yearly questionnaires.~~

~~(viii) The program makes a copy of applicable licensing requirements available to parents.~~

~~(G) **Program evaluation.**~~

~~(i) Health and safety checklists for both indoor and outdoor spaces are completed annually and kept on file at the center.~~

~~(ii) Staff and parents are surveyed every two years to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children, parents, and staff.~~

(3) **Criteria for two star centers and homes.** To be approved as a two star ~~center~~facility the owner ~~of a center~~ must either:

(A) complete Form 07LC025E~~, Request for Child Care Center Star Certification~~ or Form 07LC027E, and meet all one star plus and two star criteria~~, and the criteria~~ described in ~~(A) through (J) of this paragraph criteria~~(b) of this Section; or

(B) complete Form 07LC025E or Form 07LC027E, meet licensing status and compliance ~~described in (b)(2)(A)of this Section~~per OAC 340:110-1-8.4 and provide documentation that the ~~center~~facility is ~~accredited by~~:

(i) accredited by a national accrediting body approved by Oklahoma Child Care Services (OCCS); or

(ii) a Head Start grantee and compliant with Head Start Performance Standards.

~~(A) **Administrative.**~~

~~(i) A policy and procedure manual that includes job duties and responsibilities for all staff is maintained on site.~~

~~(ii) A minimum of two staff meetings are conducted annually.~~

~~(iii) The program must have and follow a salary scale with increments based on job title, level of education, credentials, and years of early childhood experience. Compensation is based upon consideration of education, experience, and performance.~~

~~(B) **Director.** The director is a member of an early care and education professional organization.~~

~~(C) **Learning environment.**~~

~~(i) The center has and follows a schedule that allows children time to complete tasks. The schedule reflects a balance and variety of activities that includes time for indoor and outdoor play, active and quiet play, rest periods, and meals.~~

~~(ii) Space for children two years of age and older is arranged in a minimum of seven well defined and equipped interest areas in each classroom to facilitate a variety of activities, which must include block building, dramatic play, manipulative play, art, book reading, math, and science or nature. The program has at least two learning centers available outdoors for children's use.~~

~~(D) **Master teachers required.** There is a full-time master teacher for every 30 children of the licensed capacity. During the second and subsequent years as a two or three star center, there must be a master teacher for every 20 children of the licensed capacity. This number does not include school age children if the majority of children in care are younger than five years of age.~~

~~(i) Centers licensed as school age programs or programs where the majority of children are school age must have a master teacher for every 40 children of the licensed capacity.~~

~~(ii) A person is not counted as a master teacher, director, or primary caregiver in more than one facility or considered a master teacher in one facility and a director of another facility unless the facilities are programs that do not operate concurrently at any given time.~~

~~(E) **Master teacher qualification.** Master teachers must be employed, and on-site on a full-time basis and meet and maintain one of the requirements in (i) through (vii):~~

~~(i) Occupational child care competency certificate for master teacher or lead teacher through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting.~~

~~(ii) Current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential.~~

~~(iii) Certificate of Mastery in early childhood education or child development from an accredited Oklahoma college or university.~~

~~(iv) 30 college credit hours from an accredited college or university, including 12 credit hours in early childhood education, child development, or other coursework that supports working with children.~~

~~(v) Four year degree from an accredited college or university with six college credit hours in early childhood education, child development, or other coursework that supports working with children.~~

~~(vi) Two or four year degree from an accredited college or university in early childhood education or child development.~~

~~(vii) A valid teaching certificate in early childhood education from the Oklahoma State Department of Education.~~

~~(F) **School-age master teacher.** In centers licensed as school-age programs or programs where the majority of children are school-age, the master teacher must be employed and on site at least 50% of the weekly operating hours. The master teacher must currently meet and maintain one of the following:~~

~~(i) one of the qualifications in (3)(E); however, a degree or coursework in (3)(E)(iii) through (vii) may also be in elementary education, recreation, or other coursework that supports working with children, families, and the community; or~~

~~(ii) 120 clock hours of training within the last five years, one year of full time experience in a licensed school-age child care program or legally exempt school-age child care program, and every two years receive a minimum score of 5.0 on the School-Age Environment Rating Scale in a classroom where the master teacher is the lead teacher.~~

~~(G) **Master teacher responsibilities.** Master teachers work directly with children and support other teaching staff with responsibilities such as program development, weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.~~

~~(H) **Director as master teacher.** The director may be counted as a master teacher only if the licensed capacity minus school-age children is 30 or less. The director may be counted as a master teacher in centers licensed as school-age programs or programs where the majority of children are school-age.~~

~~(I) **Parent involvement.**~~

~~(i) A written report about the child is provided to parents at the annual parent conference.~~

~~(ii) The program maintains a current list of available community resources and assists parents in locating and connecting with these services as needed.~~

~~(J) **Program evaluation.** All methods of program evaluation as described in (i) through (iv) of this paragraph must be completed within one year of receiving two star status and repeated as noted.~~

~~(i) An approved self-assessment tool is completed every two years and is kept on file at the center.~~

~~(ii) The program is assessed every three years using an assessment tool approved by OCCS. This assessment is not required for programs accredited by a national accrediting body approved by OCCS.~~

~~(iii) Program goals are established and updated every two years based on information gathered from the completed health and safety checklists, parent and staff surveys, self assessment, and an assessment tool approved by OCCS.~~

~~(iv) The program has a written plan for meeting established goals.~~

(4) **Criteria for three star ~~centers~~center and home facilities.** To be approved as a three star ~~center~~facility, the owner of a ~~center~~facility must:

(A) complete Form 07LC025E, ~~Request for Child Care Center Star Certification,~~or Form 07LC027E; and

(B) meet ~~all~~ one star plus and two star center criteria~~, except for the assessment in (b)(3)(J)(ii) of this Section,~~described in (b) of this Section and either be:

(i) ~~be~~ accredited by a national accrediting body approved by OCCS; or

(ii) a Head Start grantee and compliant with Head Start Performance Standards.

~~(c) **Criteria for family child care home certification levels.** The levels of certification for family child care homes are contained in this subsection.~~

~~(1) **Criteria for one star homes.** A home operating on a permit, or license, or provisional license is automatically designated as a one star home.~~

~~(2) **Criteria for one star plus homes.** To be approved as a one star plus family child care home or large family child care home, the owner must complete and submit Form 07LC027E, Request for Family Child Care Home Star Certification, and meet all the requirements in (A) through (F) of this paragraph. A home may operate on one star plus status for a total of 24 months, which are not required to run consecutively. After 24 months of one star plus certification, the home must be approved for a higher star level, approved for an extension of time to comply, or return to one star status. If the new criteria cannot be met at 24 months, a facility may request an extension of time to comply as set forth in (g) of this Section.~~

~~(A) **Licensing status and compliance.** The home must have a license, provisional license, or permit. The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed. If there are two or more incidents of numerous, repeated, or serious non-compliance with applicable licensing requirements or one serious incident resulting in injury or imminent risk of harm, the~~

~~request may be denied. The licensing record from the applicant's previous licenses, if any is considered. Numerous, repeated, and serious non-compliance as referenced in OAC 340:110-1-9.3 are considered when approving or denying star certification.~~

~~(B) **Home provider.** At application, the primary caregiver must have documentation of 20 clock hours of job-related training. At initial application, the training may be counted if training was obtained within the last 12 months or within the primary caregiver's employment year. After approval for certification, the training criteria must be met within the primary caregiver's employment year.~~

~~(i) A primary caregiver may count a total of six hours of in-service training each year. In-service training includes videos, informal on-site and home association training. Reading does not count for stars training.~~

~~(ii) The primary caregiver has a written professional development plan that is kept on file in the home. The professional development plan is reviewed annually and updated as needed.~~

~~(C) **Assistant Caregiver.**~~

~~(i) Any assistant caregiver employed for at least 12 months must have documentation of 20 clock hours of job-related training per employment year.~~

~~(ii) The assistant caregiver may count a total of six hours of in-service training each year. In-service training includes videos, informal on-site and home association training. Reading does not count for stars training.~~

~~(iii) The assistant caregiver has a written professional development plan on file in the home. The professional development plan is reviewed annually and updated as needed.~~

~~(D) **Learning environment.** A written daily schedule that reflects a balanced program of opportunities for learning, indoor and outdoor play, rest periods, and meals is followed. The daily schedule is posted. Children are read to a minimum of 15 minutes each day.~~

~~(E) **Parent involvement.** The primary caregiver must provide the methods of parent communication contained in this subparagraph. The primary caregiver:~~

~~(i) maintains a signed contract on file for each family that includes, but is not limited to, policy concerning hours, fees, payment schedule, vacation, and termination;~~

~~(ii) encourages parents to visit any time their children are present, and provides access to all parts of the home used for child care;~~

~~(iii) arranges for and documents, at least once per year, a conference with each child's parents. They discuss the child's current progress, accomplishments and challenges, and set goals together. Documentation of the parent conference is kept with the child's records;~~

~~(iv) makes opportunities available for parents to be involved in the program's activities;~~

~~(v) has information available about common childhood issues and resources that provide services to parents and children and makes referrals as needed; and~~

~~(vi) makes a copy of applicable licensing requirements available to parents.~~

~~(F) **Program evaluation.**~~

~~(i) Health and safety checklists for both indoor and outdoor spaces are completed annually and kept on file in the home.~~

~~(ii) Parents are surveyed every two years to identify strengths and weaknesses of the program and evaluate the program's effectiveness in meeting the needs of children and parents.~~

~~(3) **Criteria for two star homes.** To be approved as a two star home, the owner must complete Form 07LC027E, Request for Family Child Care Home Star Certification, and meet all one star plus criteria and the criteria described in (A) through (E) of this paragraph (b) or meet licensing status and compliance described in (c)(2)(A) and provide documentation that the home is accredited by the National Association of Family Child Care.~~

~~(A) **Provider qualifications.** The primary caregiver in a family child care home or in a large family child care home, must be on site on a full-time basis and meet and maintain one of the provider qualifications listed in (i) through (viii) of this subparagraph. A person is not counted as a center master teacher, director, or primary caregiver at more than one facility unless the facilities are programs that do not operate concurrently at any given time. The qualifying criteria are:~~

~~(i) occupational child care competency certificate for Master Teacher or Lead Teacher through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting;~~

~~(ii) current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential;~~

~~(iii) Certificate of Mastery in early childhood education or child development from an accredited Oklahoma college or university;~~

~~(iv) 30 credit hours from an accredited college or university including 12 credit hours in early childhood education, child development, or other coursework that supports working with children;~~

~~(v) four year degree from an accredited college or university with six college credit hours in early childhood education, child development, or other coursework that supports working with children;~~

~~(vi) two or four-year degree from an accredited college or university in early childhood education or child development;~~

~~(vii) a valid teaching certificate in early childhood education from the Oklahoma State Department of Education; or~~

~~(viii) if approved prior to June 1, 2004, the provider may continue to meet this criteria if the provider maintains 120 hours of job-related training within the last five years, five years of full-time experience in a licensed or legally exempt child care setting, and every two years receives a minimum score of 5.0 on the Family Child Care Environment Rating Scale—Revised.~~

~~(B) **Assistant caregiver.**~~

~~(i) The owner or primary caregiver has a written job description for any assistant caregiver that defines the assistant's responsibilities.~~

~~(ii) Assistants are evaluated in writing annually by the owner or primary caregiver.~~

~~(C) **Learning environment.** Children have opportunities during the day to access dramatic and manipulative play, blocks, art, and books. The provider has a plan for transition times.~~

~~(D) **Parent involvement.**~~

~~(i) At least two references for the primary caregiver, including contact information, are available to parents. References from relatives are not accepted.~~

~~(ii) The primary caregiver has and uses a system for sharing and communicating with parents the happenings, activities, and related issues about their child's physical and emotional state.~~

~~(E) **Program evaluation.** All methods of program evaluation described in (i) through (iv) of this paragraph must be completed within one year of receiving two star status and repeated as noted.~~

~~(i) An approved self-assessment tool is completed annually and kept on file in the home.~~

~~(ii) The program is assessed every three years using an assessment tool approved by OCCS. This assessment is not required for programs accredited through the National Association of Family Child Care.~~

~~(iii) Program goals are established and updated every two years based on information gathered from the completed health and safety checklists, parent surveys, self-assessment, and an assessment tool approved by OCCS.~~

~~(iv) The owner or primary caregiver has a written plan for meeting established goals.~~

~~(4) **Criteria for three star homes.** To be approved as a three star home, the owner must complete Form 07LC027E, Request for Family Child Care Home Star Certification, meet all one star plus and two star home criteria, except for the assessment in (c)(3)(E)(ii) of this Section, and be accredited by the National Association of Family Child Care.~~

(d) **Approval for certification for homes and centers.** The procedures contained in this subsection are followed for initial approval for certification and requests for higher certification level.

(1) The owner submits Form 07LC025E, Request for Child Care Center Star Certification, or Form 07LC027E, Request for Family Child Care Home Star Certification, and required documentation to OCCS.

(2) The stars outreach specialist determines whether the certification criteria have been met by reviewing the case record and the documentation submitted. If it has been four months since the last monitoring visit, the stars outreach specialist requests licensing staff ~~to~~ make a monitoring visit. The stars outreach specialist reviews all information and consults with the licensing staff and stars program manager as needed, prior to approval.

(A) The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed to determine whether the facility meets the compliance criteria. If, within the 24 month period reviewed, there are ~~two or more incidents of~~ numerous, repeated, or serious non-compliance ~~as defined in (b)(2)(A) and (c)(2)(A) of this Section~~ per OAC 340:110-1-8.4 or one serious incident resulting in injury or imminent risk of harm to a child, the request may be denied.

(B) If the facility meets the criteria, the stars outreach specialist updates the licensing database. The stars outreach specialist sends a letter confirming the approval and the effective date. If numerous, repeated, or serious non-compliance was identified during review of the case for the star certification, the letter includes a statement that these non-compliances are considered and may result in reduction of the star certification if subsequent serious non-compliances occur.

(C) If the facility fails to meet the criteria, the stars outreach specialist sends a letter identifying ~~all the~~ criteria that have not been met. The application is also reviewed by the stars outreach specialist to determine if another certification level can be met. The stars outreach specialist updates the licensing database accordingly.

~~(i) If the owner fails to submit Form 07LC025E, Request for Child Care Center Star Certification, or 07LC027E, Request for Family Child Care Home Star Certification, with supporting documentation at least 15 days prior to the end of the one star plus certification period, the star status expires and the database is updated to show the facility has returned to a one star level. This does not constitute a reduction in certification level as set forth in (h) of this Section. The stars outreach specialist sends a letter documenting the return to one star level.~~

~~(ii) If the owner applies for but is denied a higher star at 24 months of one star plus, and has~~

~~not been approved for an extension of time to comply from OCCS, the star status expires and the database is updated to show the facility has returned to a one star level. This does not constitute a reduction in certification level as set forth in (h) of this Section.~~

(D) The owner may reapply at any time the criteria are met. If the request for a higher certification level is denied due to numerous, repeated, or serious non-compliance with licensing requirements, the facility is not approved for a higher certification level for six months after the date of the denial of the request. The six-month waiting period may only be reduced by the regional programs manager (RPM) upon evaluation of the facility's licensing record, written documentation of corrective actions taken, and observation and documentation by licensing staff of substantial improvement in compliance. The RPM notifies the provider in writing of the decision.

(E) The owner may withdraw the application prior to certification denial.

(F) The owner of a home or center may request a reduction in star status at any time. The request must be made in writing to OCCS. The stars outreach specialist sends a letter documenting the request for reduction, along with the effective date of the new star level, and updates the database to show the facility's new star level. A request to be reduced does not constitute a reduction in certification level as set forth in (h) of this Section.

(e) **Complaint investigations.** Pending complaint investigations do not impact the decision to approve the stars application.

(f) **Ongoing monitoring.** The procedures contained in this subsection are followed for ongoing monitoring.

(1) ~~**Written notice**~~**Facility notification to OCCS.** The owner, director, or primary caregiver is required to notify OCCS in writing within five working days of any change in information that affects the facility's star certification, such as loss of a master teacher. If OCCS has not been notified of changes and certification criteria have not been met for over 90 days, the case is reviewed by OCCS staff. Referrals may be made to the stars outreach specialist and the certification level may be reduced according to (h) of this Section.

(2) **Periodic certification reviews.** OCCS staff completes a full star certification review, a minimum of once a year using Form 07LC026E, Child Care Center Star Certification Review, or Form 07LC028E, Family Child Care Home Star Certification Review, to verify that certification criteria is still current and accurate.

(~~2~~3) **Periodic monitoring visits.** ~~OCCS staff completes Form 07LC026E, Child Care Center Star Certification Review, or 07LC028E, Family Child Care Home Star Certification Review, a minimum of once per year, and verifiesthat certification criteria is current and accurate. OCCS staff provides written notice to the owner that certification criteria are not being met when:~~

~~(A) there is serious non-compliance with requirements, as outlined in (b)(2)(A)(iii) for centers and (c)(2)(A)(iii) for homes;~~

~~(B) a complaint that may place the health, safety, or well-being of children at imminent risk of harm is substantiated; and/or~~

~~(C) OCCS staff have knowledge the facility is not meeting certification criteria such as having an insufficient number of master teachers.~~If OCCS staff observe violations of the star criteria during periodic monitoring visits, staff complete Form 07LC026E, Child Care Center Star Certification Review, or Form 07LC028E, Family Child Care Home Star Certification Review, as a partial visit to address the violations.

(~~3~~4) **Non-compliance.** If a facility has serious non-compliance with licensing requirements, within a 24-month period, a serious incident resulting in injury or imminent risk of harm to a child or violations with other star criteria, the star level of a one star plus, two, or three star facility may be reduced.

(~~4~~5) **Violations.** If violations of certification criteria are documented, or when the facility notifies OCCS in writing of any change, the procedures in (A) through (C) of this paragraph are followed.

(A) OCCS staff provides written notification to the director or primary caregiver and owner of a facility to document the violations and include a statement that a reduction in the star certification level may occur when:

(i) ~~violations are not corrected in the agreed-upon time frame~~the facility has serious non-compliances with licensing requirements;

(ii) ~~the facility has serious non-compliance with licensing requirements~~ a serious incident occurs resulting in injury or imminent risk of harm to a child;

(iii) ~~a serious incident occurs resulting in injury or imminent risk of harm to a child~~violations are not corrected in the agreed-upon time frame; or

(iv) an Emergency Order or notice of proposed denial or revocation of license is issued.

(B) The statement informs the director or primary caregiver, they may request an extension of time to comply, as outlined in (g) of this Section.

(C) The facility submits a written plan to OCCS ~~for correcting~~to correct the violations within an agreed-upon time frame. The plan can not exceed 90 days from the date the violation occurred or the date a facility ~~is~~was notified of a substantiated complaint.

(6) **Follow up of violation of criteria.** OCCS staff are responsible for verifying violations of star criteria are corrected as determined by the approved plan of correction.

(7) **Written notice.** OCCS staff provides written notice to the owner that certification criteria are not being met when:

(A) there is serious non-compliance with requirements, per OAC 340:110-1-8.4;

(B) a serious complaint that may place the health, safety, or well-being of children at imminent risk of harm is substantiated; and/or

(C) OCCS staff have knowledge the facility is not meeting certification criteria such as having an insufficient number of master teachers.

(g) **Extension of time to comply.**

(1) A request for an extension of time to comply may be submitted when~~:~~

~~(A)~~ violations of star criteria cannot be corrected within the agreed upon plan of correction time~~; or~~

~~(B) two star criteria cannot be met within 24 months of one star plus certification~~.

(2) A request for an extension of time to comply to meet licensing requirements ~~for~~such as director qualifications is not approved.

(3) The owner, director, or primary caregiver submits Form 07LC074E, Request for Extension of Time to Comply, along with supporting documentation to the stars program manager or designee 30 days prior to the expiration of the ~~one star plus certification or the~~ agreed-upon time frame for the correction of the violations.

(4) The decision to approve or deny an extension of time to comply is made by the stars program manager or designee. One or more discretionary extensions of time to comply may be granted. Approval of an extension of time to comply does not set a precedent and each request is independently evaluated. The director or primary caregiver is notified of the decision in writing.

(h) **Reduction in one star plus, two, and three star certification levels.**

(1) A reduction in one star plus, two, and three star occurs when OCCS has issued a written Emergency Order or notice of denial or revocation of license.

(2) A reduction may occur when ~~violations are not corrected within the agreed-upon time frame; the facility has serious non-compliance with licensing requirements; a serious incident occurs resulting in injury or imminent risk of harm to a child or a facility fails to employ a qualified director for a period of six months or more~~:

(A) the facility has serious non-compliance with licensing requirements within a 24 month time frame;

(B) a serious incident occurs resulting in injury or imminent risk of harm to a child;

(C) violations are not corrected within the agreed-upon time frame; or

(D) a facility fails to employ a qualified director for a period of six months or more.

(3) The procedures in this subsection are followed if a reduction is warranted.

(A) The licensing staff reviews the case with the supervisor and RPM. The decision on whether to make a referral to the stars program manager or designee is made by the RPM and referrals are made in writing to the stars program manager or designee. The RPM may enter into an agreement for an alternative settlement with the owner of a facility in lieu of referral for reduction. The alternative settlement documents how the facility will go above and beyond minimum licensing requirements and ensure a higher standard or quality of care. It is the RPM's decision to accept or deny the alternative settlement.

(B) If a reduction is warranted, the stars program manager or designee sends a certified letter to the primary caregiver or director and owner documenting the reduction in certification level and notifying the provider of the right to request an administrative review of the decision. ~~A copy of the letter is sent to the owner of the facility.~~

(C) The certified mail delivery receipt card is addressed to return to the director of OCCS or designee.

(D) In order to receive an administrative review, the owner must submit a written request ~~in writing~~ to the director of OCCS or designee within 15 calendar days of receipt of the letter notifying of the reduction.

(E) The request must include written documentation stating the provider's grounds for appeal.

(~~3~~4) OCCS licensing staff update any changes in the star status level and star payment rate following verification of receipt of the certified letter and the administrative review, if requested.

(~~4~~5) The purpose of the administrative review process is to determine if the reduction of the star certification level was in accordance with OKDHS policy and whether the reduction is substantially supported by the evidence. The procedures in (A) through (C) of this paragraph are followed when an administrative review is requested.

(A) Within 30 days of receipt of the request for an administrative review, a letter is sent notifying the provider of the date of the administrative review. The letter is sent to the provider's last known address. The provider is given at least two weeks written notice prior to the administrative review. Additional documentation may be presented prior to or at the beginning of the administrative review, with copies provided to all representatives. The provider may submit written documentation and appear at the administrative review.

(B) The review is conducted by the stars review panel, which consists of ~~three~~two OKDHS staff persons who have not been involved in the decision to reduce the certification level and one member of the Child Care Advisory Committee who has no relationship to the facility. ~~The provider may submit written documentation and appear at the administrative review.~~

(C) When possible, the reviewing panel makes a determination to either affirm or reverse the OCCS decision on the date of the administrative review and announces the decision at the conclusion of the review. Time constraints or the complexity of issues may require the panel to take a matter under advisement. Written findings are completed within ten calendar days from the date of the review.

(~~5~~6) The owner may reapply for a higher certification level at any time the criteria are met. If the certification

level is reduced due to serious non-compliance with licensing requirements, the facility is not approved for a higher certification level for six months after the receipt of the certified reduction letter.

(i) **Change in ownership.** When there is a change in ownership or change in form of business entity of a family child care home, child care center, part-day children's program, or school-age program, the case is closed and the star status is removed, unless otherwise determined per OAC 340:110-1-9. To be approved for a higher star level, the new owner must complete and submit Form 07LC025E, Request for Child Care Center Star Certification, or Form 07LC027E, Request for Family Child Care Home Star Certification, and meet all the requirements applicable to the star level for which application is made.

(j) **Change in location.** If the location of a facility changes, the licensing staff completes Form 07LC026E, Child Care Center Star Certification Review, or Form 07LC028E, Family Child Care Home Star Certification Review, to verify compliance with the criteria at the new location.

(k) **Record-keeping.** Periodic review forms, certification request forms, and supporting documentation are maintained in the official licensing file or in a separate file that is part of the open record, with the exception of page 6, of Form 07LC025E, Request for Child Care Center Star Certification, staff salary report, which is kept confidential. When maintained, pay stubs and photos that include children are also kept confidential.

340:110-1-8.4. Licensing status and compliance for differential qualityrating and improvement certification criteria

(a) **Licensing status criteria for one star plus, two star, and three star levels.** For certification, facilities must have a license or permit.

(b) **Compliance criteria for one star plus, two star, and three star levels.** The monitoring visits and substantiated complaints for the last 24 months of operation are reviewed. The licensing record from the applicant's previous licenses if any is considered. Numerous, repeated, and serious non-compliance per OAC 340:110-1-9.3 are considered when approving or denying star certification. The request for certification may be denied or status may be reduced, if:

(1) there are numerous, repeated, or serious non-compliance with applicable licensing requirements; or

(2) a serious incident resulting in injury or imminent risk of harm.

340:110-1-8.5. Administrative differential quality rating and improvement certification criteria

(a) **Criteria one star plus centers.** Administrative criteria listed in (1) - (5) of this subsection are required.

(1) At least annually, the director or supervising staff evaluates staff in writing using the Oklahoma Core Competencies and develops the educational professional development plan.

(2) All staff have access to licensing requirements.

(3) The center provides an employee handbook for staff and includes information on hiring and firing, job duties and responsibilities, professional development requirements, child abuse reporting, and personnel attendance policy.

(4) The facility is registered as a direct care organization with the Oklahoma Professional Development Registry.

(5) Staff counted in staff-child ratio are members of the Oklahoma Professional Development Registry and have current professional development ladder certificates. New staff must be listed on the registry within 12 months of employment.

(b) **Criteria two star and three star centers.** Administrative criteria listed in subsection (a) and (1) - (2) of this subsection are required.

(1) A policy and procedure manual is maintained on site for staff and includes the program's mission or vision statement, information on organizational structure, code of professional conduct, and the center's discipline philosophy.

(2) A minimum of two staff meetings are conducted annually and include time to discuss quality and its impact on the facility.

(c) **Criteria one star plus homes.** Administrative criteria listed in (1) - (2) of this subsection are required.

(1) The primary caregiver is a member of the Oklahoma Professional Development Registry and has a current professional development ladder certificate.

(2) Assistant caregivers are members of the Oklahoma Professional Development Registry and have current professional development ladder certificates.

(d) **Criteria two and three star homes.** Administrative criteria listed in subsection (c) and (1) - (2) of this subsection are required.

(1) The owner or primary caregiver has a written job description for any assistant caregiver that defines the assistant's responsibilities.

(2) Assistants are evaluated in writing annually by the owner or primary caregiver, including developing the educational professional development plan.

340:110-1-8.6. Director, staff, and primary caregiver qualifications for differential quality rating and improvement certification criteria

(a) **Master teacher and primary caregiver qualifications for two and three star levels.** Master teachers and primary caregivers must be employed on-site on a full-time basis and trained in Oklahoma's Early Learning Guidelines. A person is not counted as a center master teacher, director, or primary caregiver at more than one facility, unless the facilities are programs that do not operate concurrently at any given time.

(1) Master teachers meet and maintain one of the requirements in (A) through (G) of paragraph (2) of this subsection.

(2) Primary caregivers meet and maintain one of the requirements in (A) through (H) of this paragraph.

(A) Occupational child care competency certificate for master teacher or lead teacher through an Oklahoma technology center and three months of satisfactory full-time experience in a licensed or legally exempt child care setting.

(B) Current Child Development Associate (CDA) or Certified Childcare Professional (CCP) credential.

(C) Certificate of Mastery in early childhood education or child development from an accredited Oklahoma college or university.

(D) Thirty college credit hours from an accredited college or university, including 15 credit hours in early childhood education, child development, or other coursework that supports working with children.

(E) Four-year degree from an accredited college or university with six college credit hours in early childhood education, child development, or other coursework that supports working with children.

(F) Two or four-year degree from an accredited college or university in early childhood education or child development.

(G) A valid teaching certificate in early childhood education from the Oklahoma State Department of Education.

(H) if approved prior to June 1, 2004, the provider may continue to meet this criteria if the provider maintains 120 hours of job-related professional development within the last five years, five years of full-time experience in a licensed or legally exempt child care setting, and every two years receives a minimum score of 5.0 on the Family Child Care Environment Rating Scale - Revised.

(b) **School-age master teacher qualifications.** In centers licensed as school-age programs or programs where the majority of children are school-age, the master teacher must be employed and on-site at least 50 per cent of the weekly operating hours. The master teacher must currently meet and maintain either:

(1) one of the qualifications in (a) of this Section; however, a degree or coursework in (a)(C) through (G) may also be in elementary education, recreation, or other coursework that supports working with children, families, and the community; or

(2) 120 clock hours of professional development within the last five years, one year of full-time experience in a licensed school-age child care program or legally exempt school-age child care program, and every two years receive a minimum score of 5.0 on the School-Age Environment Rating Scale in a classroom where the master teacher is the lead teacher.

(c) **Master teachers required for two and three star centers.** There is a full-time master teacher for every 30 children of the licensed capacity. During the second and subsequent years as a two or three star center, there must be a master teacher for every 20 children of the licensed capacity. This number does not include school-age children, if the majority of children in care are younger than five years of age.

(1) Centers licensed as school-age programs or programs where the majority of children are school-age must have a master teacher for every 40 children of the licensed capacity.

(2) A person is not counted as a master teacher, director, or primary caregiver in more than one facility or considered a master teacher in one facility and a director of another facility, unless the facilities are programs that do not operate concurrently at any given time.

(d) **Director as master teacher.** The director may be counted as a master teacher only if the licensed capacity minus school-age children is 30 or less. The director may be counted as a master teacher in centers licensed as school-age programs or programs where the majority of children are school-age.

(e) **Master teacher responsibilities.** Master teachers work directly with children and support other teaching staff with responsibilities such as program development, weekly lesson plans, use of space and equipment, interactions with parents, and program evaluation.

340:110-1-8.7. Professional development for differential quality rating and improvement certification criteria

(a) **Director professional development requirements for one star plus, two star, and three star centers.** Director qualifications listed in (1) - (6) of this subsection are required.

(1) The director must have documentation of at least two college credits or 30 clock hours of job-related professional development within the last 12 months prior to application.

(2) If a new director is hired, the director must have documentation of at least two college credits or 30 clock hours of job-related professional development within the last 12 months prior to employment. If the new director does not have the two college credits or 30 clock hours of professional development, the facility is required to submit a written plan to licensing staff for correcting the violation within 90 days of the new director's hire date.

(3) In subsequent years of star status certification, the director must have documentation of at least two college credits or 30 clock hours of job-related professional development per employment year.

(4) A director may count a total of six hours of in-service training each year. In-service training includes videos and informal on-site staff training. Reading does not count for professional development.

(5) A person is not counted as a center master teacher, director, or primary caregiver at more than one facility, unless the facilities are programs that do not operate concurrently at any given time.

(6) The director has a written educational professional development plan on file at the center. The educational professional development plan is reviewed annually and updated as needed.

(b) **Staff professional development requirements for one star plus, two star, and three star centers.** Staff qualifications listed in (1) - (7) of this subsection are required.

(1) At application, center staff employed at the facility for at least 12 months and counted toward meeting the staff-child ratio must have at least two college credits or 20 clock hours of job-related professional development per employment year. At initial application, professional development may be counted if obtained within the last 12 months or within the staff's employment year.

(2) After initial approval for certification, the professional development criteria of at least two college credits or 20 clock hours of job-related professional development must be met within the staff's employment year.

(3) The professional development requirement applies to part-time staff and permanent substitutes who have worked at the child care center more than a total of 40 hours. Staff persons who perform only auxiliary duties, such as cooking, transportation, or maintenance are exempt from this professional development requirement.

(4) Staff may count a total of six hours of in-service training each year. In-service training includes videos and informal on-site staff training. Reading does not count for professional development.

(5) All full-time staff have a written educational professional development plan on file at the center. The educational professional development plan is reviewed annually and updated as needed.

(6) One staff for every 20 children of the licensed capacity must actively work toward the educational requirements to obtain master teacher qualifications.

(7) Staff working toward or meeting master teacher qualifications are trained in Oklahoma's Early Learning Guidelines.

(c) **Primary caregiver professional development requirements for one star plus, two star, and three star homes.** Primary caregiver qualifications listed in (1) - (2) of this subsection are required.

(1) At application, the primary caregiver must have documentation of at least two college credits or 20 clock hours of job-related professional development. At initial application, the professional development may be counted if obtained within the last 12 months or within the primary caregiver's employment year.

(2) After approval for certification, the professional development criteria must be met within the primary caregiver's employment year.

(A) A primary caregiver may count a total of six hours of in-service training each year. In-service training includes videos, informal on-site and home association training. Reading does not count for professional development.

(B) The primary caregiver has a written educational professional development plan that is kept on file in the home. The educational professional development plan is reviewed annually and updated as needed.

(C) The primary caregiver must actively work toward the education requirements to obtain the provider qualifications.

(D) The primary caregiver is trained in Oklahoma's Early LearningGuidelines.

(d) **Assistant caregiver professional development for one star plus, two star, and three star level homes.** Assistant caregiver qualifications listed in (1) - (3) of this subsection are required.

(1) Any assistant caregiver employed for at least 12 months must have documentation of at least two college credits or 20 clock hours of job-related professional development per employment year.

(2) The assistant caregiver may count a total of six hours of in-service training each year. In-service training includes videos, informal on-site, and home association training. Reading does not count for professional development.

(3) The assistant caregiver has a written educational professional development plan on file in the home. The educational professional development plan is reviewed annually and updated as needed.

340:110-1-8.8. Learning environment differential quality rating andimprovement certification criteria

(a) **Criteria for one star plus centers.** Learning environment criteria listed in (1) - (5) of this subsection are required.

(1) The center has and follows current weekly lesson plans appropriate for the developmental needs of all groups of children. Current lesson plans are readily available in each classroom.

(2) Space for children two years of age and older is arranged in a minimum of six well-defined and equipped interest areas in each classroom to facilitate a variety of activities that must include art, block building, book reading, dramatic play, manipulative play, and music and movement.

(3) Teachers read to children a minimum of 15 minutes each day.

(4) The indoor, and as weather permits, outdoor environment are utilized daily for children to engage in physical activity.

(5) Television or other screen time is not used for children younger than two years of age.

(b) **Criteria for two and three star centers.** Learning environment criteria listed in subsection (a) and (1) - (4) of this subsection are required.

(1) The center has and follows a schedule that allows children time to complete tasks. The schedule reflects a balance and variety of activities that includes time for indoor and outdoor play, active and quiet play, rest periods, and meals.

(2) Space for children two years of age and older is arranged in a minimum of eight well-defined and equipped interest areas in each classroom to facilitate a variety of activities that must include art, block building, book reading, dramatic play, manipulative play, math, music and movement, and science or nature. The program has at least two learning centers available outdoors for children's use.

(3) The program utilizes Oklahoma Early Learning Guidelines as a resource for lesson and curriculum planning.

(4) Staff participate in physical activity with children at least once per day.

(c) **Criteria for one star plus homes.** Learning environment criteria listed in (1) - (4) of this subsection are required.

(1) A written daily schedule that reflects a balanced program of opportunities for learning, physical activity, indoor and outdoor play, rest periods, and meals is followed.

(2) The daily schedule is posted.

(3) Children are read to a minimum of 15 minutes each day.

(4) Television or other screen time is not used for children younger than two years of age.

(d) **Criteria for two and three star homes.** Learning environment criteria listed in subsection (c) and in (1) - (2) of this subsection are required.

(1) Children have opportunities during the day to access art, block building, book reading, dramatic play, manipulative play, and music and movement.

(2) The provider has a plan for transition times.

340:110-1-8.9. Family engagement quality rating and improvement certification criteria

(a) **Criteria one star plus centers.** Family engagement criteria listed in (1) - (8) of this subsection are required.

(1) A system is established and maintained for sharing with and communicating to families the happenings, activities, and related issues about a child's physical and emotional state.

(2) Families are welcomed into the center at all times, for example, to eat lunch with a child, observe, or volunteer in the classroom.

(3) Individual parent conferences are arranged and documented to discuss and set goals regarding the child's progress, accomplishments, and challenges, at least annually and as needed. Documentation of parent conferences is maintained with the child's records.

(4) There is a family resource area with books, pamphlets, and articles on children and family issues accessible and available to families.

(5) At least two family meetings with guest speakers or special events are held each year such as open houses, brown bag lunches, family pot-luck dinners, and children's programs.

(6) Families are informed of the center's program by two of these methods:

(A) bulletin board;

(B) newsletter;

(C) parent handbook;

(D) website, specific to each center location; or

(E) email.

(7) Families participate in program and policy development through board involvement and planning meetings or are given an opportunity to complete yearly questionnaires.

(8) The program makes a copy of applicable licensing requirements available to families.

(b) **Criteria two and three star centers.** Family engagement criteria listed in subsection (a) and (1) - (2) of this subsection are required.

(1) Parent conferences are held at least twice a year and a written report about the child is provided to parents at the conference.

(2) The program maintains a current list of available community resources including health care, education, nutrition, and counseling and assists families in locating and connecting with these services, as needed.

(c) **Criteria one star plus homes.** Family engagement criteria listed in (1) - (6) of this subsection are required. The primary caregiver:

(1) maintains a signed contract on file for each family that includes, but is not limited to policy concerning hours, fees, payment schedules, vacations, and terminations;

(2) encourages families to visit any time their children are present and provides access to all parts of the home used for child care;

(3) arranges for and documents individual parent conferences to discuss and set goals regarding the child's progress, accomplishments, and challenges, at least annually and as needed. Documentation of parent conferences is maintained with the child's records;

(4) provides opportunities for families to be involved in the program's activities;

(5) has information available about common childhood issues and resources including health care, education, nutrition, and counseling that provide services to families and children and makes referrals as needed; and

(6) makes a copy of applicable licensing requirements available to families.

(d) **Criteria two and three star homes.** Family engagement criteria listed in subsection (c) and (1) - (2) of this subsection are required. The primary caregiver:

(1) provides parents a minimum of two references, including contact information. Relative references are not accepted; and

(2) has and uses a system to communicate with families the happenings, activities, and related issues regarding their child's physical and emotional state.

340:110-1-8.10. Program evaluation differential quality rating andimprovement certification criteria.

(a) **Criteria one star plus centers and homes.** The program evaluation criteria listed in (1) - (3) of this subsection are required for child care centers. Program evaluation criteria listed in (1) - (2) of this subsection are required for family child care homes.

(1) Health and safety checklists for both indoor and outdoor spaces arecompleted annually and kept on file at the facility.

(2) Staff and parents are surveyed annually to identify strengths and weaknesses of the program and evaluate the

program's effectiveness in meeting the needs of children, parents, and staff.

(3) An equipment inventory is conducted annually using the appropriate Oklahoma Department of Human Services (OKDHS) form and kept on file at the center.

(b) **Criteria two and three star centers and homes.** Program evaluation criteria listed in subsection (a) are required. All methods of program evaluation as described in (1) through (4) of this subsection must be completed within one year of receiving two star status and repeated as required.

(1) The program is assessed every three years using an assessment tool approved by Oklahoma Child Care Services (OCCS). This assessment is not required for programs accredited by an OCCS approved national accrediting body.

(2) Program goals are established and updated annually based on information gathered from the completed health and safety checklists, parent and staff surveys, and an assessment tool approved by OCCS.

(3) The program has a written plan for meeting established goals that includes professional development and educational needs of center staff or provider and assistant as well as facility policy and procedures.

(4) Staff participate in program evaluation and the established goals are shared with staff.

340:110-1-9. Case management

(a) **Periodic monitoring visits.** The Oklahoma Child Care Services (OCCS) licensing staff makes a minimum of three unannounced monitoring visits to facilities that operate a full-year program and two unannounced monitoring visits annually to facilities that operate less than a full year. Licensing staff varies the time of monitoring visits to include lunch observation and an evening visit to child care centers with extended hours.

(b) **Ongoing monitoring.** During monitoring visits, the licensing staff observes the entire facility, including outdoor play space and vehicles used for transportation, if available. At or subsequent to each visit, licensing staff checks:

(1) compliance with licensing regulations;

(2) records for new staff including staff sheets and compliance with background investigations per OAC 340:110-1-8.1;

(3) staff training records;

(4) Oklahoma Department of Human Services (OKDHS) computer checks on applicable persons per OAC 340:110-1-8.1;

(5) fire and health inspections within the last 24 months, if applicable;

(6) Form 07LC092E, Insurance Verification, within the last 12 months, or posting of Form 07LC093E, Insurance Exception Notification; and

(7) other documentation requiring renewal.

(c) **Technical assistance and consultation.** Licensing staff provides:

(1) technical assistance to licensees to assist them in meeting minimum requirements; and

(2) consultation on various aspects of quality child care.

(d) **Agreements with tribal licensing programs and other monitoring agencies.** OKDHS may enter into a cooperative licensing agreement with a tribal licensing program or other monitoring agency.

(e) **Equipment inventory.** Licensing staff completes the appropriate Equipment Inventory Form 07LC006E, 07LC020E, or 07LC024E, prior to a license being issued. The licensing staff or the facility may complete the appropriate equipment inventory prior to a change in facility class and prior to an increase in licensed capacity in a child care center, part-day children's program, and school-age program. The purpose of the inventory is to document the equipment available and items needed to comply with the equipment requirements. The licensing staff may conduct a complete inventory any time concern exists about the availability of required equipment.

(f) **Change of address.** When a facility moves to a new address, the licensing staff conducts a monitoring visit and completes a monitoring report to verify the new location meets licensing requirements, and obtains an updated application. For child care centers, part-day children's programs, and school-age programs, new fire and health inspections, if applicable, are required. When a change of address involves care provided in a location other than the caregiver's primary residence refer to OAC 340:110-1-6(a)(3).

(g) **Change in facility name.** When there is a change in facility name, licensing staff verifies there is no change in ownership, and documents the change in the case record and database. A new application reflecting the facility name change is completed.

(h) **Change in director.** When there is a change in director, licensing staff:

(1) verifies the new director meets qualifications;

(2) obtains the applicable page of Form 07LC004E, Request for License - Child Care Facility, completed by the new director;

(3) obtains references;

(4) obtains from the director an appropriate, complete Compliance Review Forms 07LC069E, 07LC072E, or 07LC073E, if the director has no previous director experience;

(5) notifies the new director of current employees that have been granted a waiver; and

(6) documents the information on Form 07LC080E, Licensing Services Supplemental Information.

(i) **Change in primary caregiver.** When there is a change in primary caregiver, licensing staff:

(1) verifies primary caregiver meets qualifications;

(2) obtains the applicable page of Form ~~07LC042E, Request for License - Family Child Care Home and Large Child Care Home~~07LC004E, Request for License-Child Care Facility, completed by the new primary caregiver;

(3) obtains references;

(4) notifies the new primary caregiver of current employees who have been granted a waiver; and

(5) documents the information on Form 07LC080E.

(j) **Change in household.** All changes in household members are documented on the monitoring report. Form 07LC096E, Criminal History Review Request, must be submitted prior to a new adult household member residing in the home. When there is a new adult household member in a family child care home or large child care home, the required documentation includes:

(1) the applicable page of Form ~~07LC042E~~07LC004E completed by the new adult household member(s);

(2) background investigations per OAC 340:110-1-8.1; and

(3) an OKDHS computer check.

(k) **Change in ownership.** When there is a change in ownership or change in form of business organization of a family child care home, child care center, part-day program, or school-age program, typically the case is closed and a new application is obtained. Prior to the issuance of a permit or license, the facility must be in compliance with background investigations per OAC 340:110-1-8.1. A permit may be issued if a monitoring visit without numerous, repeated, or serious non-compliances was conducted at the facility within the past 60 days. A full monitoring visit is conducted within two weeks of change of ownership to verify the new owner is able to meet minimum licensing requirements.

(l) **Change in facility class.** When a facility requests a change in facility class, the procedures contained in this subsection are followed.

(1) The case is closed and a new application is required when a family child care home converts to a child care center, part-day program, or school-age program, or when a child care center, part-day program, or school-age program converts to a family child care home.

(2) Any other request for change in class does not require case closure and documentation includes:

(A) a request in writing from the provider;

(B) a new application with updated information;

(C) documentation that the facility meets the requirements for the requested class type;

(D) ~~an Equipment Inventory~~the appropriate equipment inventory, if applicable;

(E) a current approved fire inspection, if applicable;

(F) a current approved health inspection, if applicable; and

(G) database updates to the appropriate class and monitoring frequency plan.

(m) **Procedure for increasing or decreasing capacity.** When a facility requests an increase or decrease in licensed capacity, it is documented on Form 07LC080E, Licensing Services Supplemental Information, and must be approved by the licensing supervisor. If the request to increase capacity is due to additional physical space, the facility must not have a history of numerous, repeated, or serious non-compliance, and must provide:

(1) the reason for the increase;

(2) an updated floor plan on Form 07LC057E, Physical Plant, that reflects adequate indoor and outdoor space, toilets, and sinks for the increase and any changes;

(3) fire department approval of any space not previously inspected;

(4) health approval of any additional food preparation space not previously inspected;

(5) an ~~updated Equipment Inventory that reflects~~updated equipment inventory reflecting adequate equipment for the increase; and

(6) verification of the number of required master teachers.

(n) **Inactive cases.** A facility is determined to be in inactive status when care has not been provided for more than 90 days.

(1) A facility wanting to remain open after 90 days submits a request in writing including a statement that the owner will notify licensing when care is resumed. Licensing staff verify compliance with requirements prior to resuming care.

(2) The facility is contacted by licensing staff every four months by telephone or letter to update the facility status including new household members per (j) of this Section, or other facility changes.

(3) If the facility is a child care center, part-day, or school-age program voluntary closure is discussed with the owner and an agreement to close is reached if possible.

(4) If care has not been provided for more than 12 consecutive months, licensing staff sends a letter to notify the owner of case closure unless OCCS is notified within 10 days of receipt of letter.

(5) Licensing staff visits the inactive facility at least once a year to verify compliance with licensing requirements until closure is final.

(6) If a change of address occurs during the time a facility is in inactive status, a full visit is required to verify compliance and follow change of address per (f) of this Section.

(o) **Closure of an inactive family child care home and large child care home.** Procedures (1) - (4) are followed when closing an inactive family child care home.

(1) Licensing staff contacts the owner of a family child care home and large child care home during the twelfth month of inactive status to verify case status.

(2) Licensing documents the case status on Form 07LC080E, Licensing Services Supplemental Information, and notifies the owner the case will be closed should care not resume.

(3) If care has not been provided for more than 12 consecutive months, licensing staff sends a letter to notify the owner of case closure unless OCCS is notified within 10 days of receipt of letter.

(4) The family child care home and large child care home is closed and must reapply and be approved for a license prior to resuming care, per OAC 340:110-1-6.

(p) **Response to a child death.** When notified of death of a child while in child care, licensing staff completes Form 07LC079E, Child Death Report, and forwards it to the statewide licensing coordinator or designee. When notified of a death, the licensing staff visits the facility as soon as possible, unless advised otherwise by law enforcement.

(q) **Serious incident reports.** The licensing supervisor submits to the licensing regional programs manager, county director, and statewide licensing coordinator a report of any serious incident.

(r) **Self-reported incidents.** When a provider self-reports a non-compliance incident, Form 07LC080E, Licensing Services Supplemental Information, is completed and the data system is updated. A letter to include a copy of Form 07LC080E is provided to the facility.

340:110-1-9.1. Certification of child care facilities to receive increased reimbursement rate for the care of children with disabilities

(a) **Purpose.** Certification is the process through which Oklahoma Child Care Services (OCCS) licensing staff documents that a child care facility meets certification requirements for a child with disabilities.

(1) Certification is required for a provider to receive the child care rate for a child with disabilities.

(2) To qualify for the higher rate the:

(A) facility must be licensed, have a provider contract, and be certified to care for the child;

(B) child's family must be eligible for Oklahoma Department of Human Services (OKDHS) subsidized child care services; and

(C) child must be receiving benefits from at least one ~~of the sources~~source listed in (i) - (iii) of this subparagraph.

(i) Supplemental Security Income (SSI) benefits~~.~~;

(ii) SoonerStart, early intervention program for children birth to age three~~.~~; or

(iii) Special Education Services, public school program for children ~~ages three~~ three years of age and older.

(b) **Initial approval for certification.** For initial approval for certification the procedures contained in this subsection are followed.

(1) Upon receipt of Form 08AD006E, Certification for Special Needs Child Care Rate, the licensing staff contacts the facility by phone within five working days when a monitoring visit has been made in the last four months. When a monitoring visit has not been made within the last four months the licensing staff visits the child care facility within ten working days.

(2) Approval for certification is based upon verification that:

(A) the facility director or family child care home provider has completed Form 08AD006E, agreeing to meet the individual needs of the child;

(B) the facility has a previous record of compliance with minimum licensing requirements. A facility on a six-month permit may be certified if currently in compliance with licensing requirements; and

(C) the facility staff persons who work with the child have received on-site consultation regarding the nature of the child's disability and the development of a child care plan, to include staffing, equipment, and specialized training needs. The consultant provides resource materials to the facility for future reference. After initial certification, the facility staff ~~persons~~ who work with the child must conduct and document annual conferences with the child's parent or guardian to review the needs of the child. If the child's needs have changed, the procedures in (5) of this subsection are followed; and

(D) within six months of certification, appropriate staff obtain six hours of training in areas that address the care of children with disabilities.

(i) The center director and at least one person who works directly with the child must receive training. It is preferable that all staff persons who work with the child are trained.

(ii) ~~As staff changes occur, a new director or new staff persons who work directly with the child must obtain training within six months of that assignment.~~

~~(iii)~~ First aid, CPR, or informal training is not counted to meet the special training requirement.

(~~iv~~iii) Recommended training includes Special Care's Unique Environments, Child Care Careers' Helping Children with Special Needs, Tic-Toc training, SoonerStart training, or specialized workshops or conferences addressing the care of children with special needs.

(~~4~~3) Upon completion of Form 08AD006E, the licensing staff sends the original to the appropriate county child welfare staff, if child welfare involvement, or Family Support Services Division Child Care Subsidy state office staff responsible for child care assistance. Copies of Form 08AD006E and the monitoring report are sent to the licensing supervisor, and copies are maintained in the facility's file.

(~~5~~4) When Form 08AD006E is completed and Family Support Services Division (FSSD) has determined the child is eligible for one of the special needs rates, a new Form 08AD006E is completed when:

(A) the needs of the child change; or

(B) the child stops attending the facility for more than six months.

(~~6~~5) If the licensing staff documents that certification requirements have not been met, the licensing supervisor reviews the documentation and approves the denial. The licensing staff inform the provider ~~is informed~~ in writing within 30 days of the initial receipt of Form 08AD006E of the certification criteria that have not been met and the right to request an administrative review.

(~~7~~6) A request for an administrative review must be submitted in writing to the statewide licensing coordinator or designee within ten calendar days of notification. An administrative review is conducted within ten calendar days of receipt of the request.

(~~8~~7) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from OCCS.

(~~9~~8) The facility and FSSD are notified in writing of the decision by the statewide licensing coordinator.

(c) **Ongoing monitoring.** The procedure for ongoing monitoring contained in this subsection is followed.

(1) **Periodic monitoring visits.** During periodic monitoring visits, the licensing staff completes Form 07LC008E, Special Needs Rate Monitoring Report, and verifies that certification requirements are met for each child certified, including:

(A) ~~the enrollment status of the child;~~

~~(B) staff present with first aid and CPR training;~~

~~(C)~~ annual conference with the child's parent or guardian;

(~~D~~B) director and staff training relative to care of children with disabilities; and

(~~E~~C) observations that indicate that the program is meeting the individual needs of the child as recorded on Form 08AD006E.

(2) **Violations.** All violations observed are documented on ~~page 4 of the monitoring report~~ Form 07LC080E, Licensing Services Supplemental Information, and a plan of correction is developed with agreed-upon time frames for correction of violations. If there are serious or ongoing violations of certification requirements, a letter is sent to the operator documenting the violations,~~and~~ plan of correction, and a copy is sent to the parent(s) of the child with special needs who is affected by the violation(s).

(3) **Changes in facility personnel.** As personnel changes occur, a new director or new staff who work directly with the child must obtain training within six months of that assignment.

(d) **Withdrawal of certification.** ~~Certification continues until a child leaves a facility or unless~~ Withdrawal of certification occurs when there is documentation of serious or ongoing violations of certification requirements or when OKDHS has issued an Emergency Order or a notice of proposed denial or revocation of license. Violations of certification requirements are different from non-compliance with licensing requirements, although they may involve the same issue, for example, understaffing. If violations are not corrected and represent a potential risk to the child, such as serious understaffing in the child's room or staff without first aid training, the procedure in this subsection is followed.

(1) The licensing staff reviews the case with his or her supervisor.

(2) An office conference is held with the provider at which time the provider is notified that certification is being withdrawn and the provider has the right to request an administrative review of the decision.

(3) A letter is sent to the provider documenting withdrawal of certification and the right to request an administrative review of the decision. If the provider did not attend the office conference, the letter is sent by certified mail. A copy of the letter is sent to the appropriate county office staff responsible for child care assistance who is responsible for notifying the parent and provider of the rate change and its effective date.

(4) A request for an administrative review must be submitted in writing by the facility to the statewide licensing coordinator or designee within seven calendar days of receipt of the letter. An administrative review is conducted within ten calendar days of receipt of the request.

(5) The administrative review committee consists of the statewide licensing coordinator or designee and two staff from OCCS.

(6) The facility and FSSD are notified in writing of the decision by the statewide licensing coordinator or designee.

(7) A provider may reapply for certification when compliance with certification requirements has been reestablished.

340:110-1-9.3. Non-compliance with requirements

(a) **Documentation of non-compliance.** The Oklahoma Child Care Services (OCCS) licensing staff clearly and concisely documents on the monitoring report areas of non-compliance and the discussion with the operator.

(1) A plan of correction, including a specific agreed-upon time period for correction of the non-compliance, is documented for each non-compliance on the monitoring report. If a previous non-compliance was not corrected by the agreed-upon time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance has a direct impact on the heath, safety, or well-being of one or more children in care.

(3) The licensing staff requests that the operator sign the monitoring report, and explains that the operator's signature indicates acknowledgment of information recorded.

(4) If the person in charge refuses to sign, the refusal is documented on the report.

(5) The operator is given a copy of the completed monitoring report.

(b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Department of Environmental Quality official. If there is non-compliance regarding smoke detectors, the child care provider is given a copy of the Smoke Detector Law, Section 324.11A of Title 74 of the Oklahoma Statutes. If the non-compliance is not corrected by the third monitoring visit or is frequently repeated, copies of the monitoring reports are sent with a cover letter to the appropriate fire official for enforcement of the law.

(c) **Numerous, repeated, and serious non-compliance.**

(1) Numerous non-compliance is any monitoring visit with:

(A) five or more items documented as non-compliant on the monitoring report for a family child care home or large child care home;

(B) six or more items documented as non-compliant on the monitoring report for a child care center,

part-day children's program, or school-age program with a licensed capacity of less than 60; or

(C) seven or more items for a child care center, part-day children's program, or school-age program with a licensed capacity of 60 or more.

(2) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(3) Serious non-compliance is a non-compliance with licensing requirements that exposes children to conditions that present an imminent risk of harm. Imminent risk of harm must be assessed based on the age of the child, the amount of time the caregiver was out of compliance, and the caregiver's efforts to mitigate the risk. Serious non-compliances are identified through licensing observations, confirmed complaint investigations, and/or self-reported incidences. Some examples of non-compliance that may be considered as serious are:

(A) staff-child ratio;

(B) supervision of children;

(C) ~~sleep position~~infant sleep environments;

(D) prohibited disciplinary actions;

(E) licensed capacity;

(F) use of passenger restraints;

(G) water activities;

(H) pools and other water hazards;

(I) multiple hazards;

(J) weapons;

(K) reporting child abuse;

(L) knowingly permitting access to children by persons identified as restricted or registrants;

(M) failure to obtain background investigations or Child Care Restricted Registry searches;

(N) administering medication to children;

(O) room temperatures;

(P) heat sources and loss of any utility service;

(Q) compliance file and or posting;

(R) cardio-pulmonary resuscitation and first aid training;

(S) liability insurance; and

(T) vehicle liability insurance.

(d) **Case management responses to non-compliant facilities.** When there is numerous, repeated, or serious non-compliance, one or more of the actions in (1) through (11) is taken.

(1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.

(2) **Follow-up phone call.** Follow-up phone calls are made, and documented on Form 07LC080E, Licensing Services Supplemental Information. A copy of the documentation is mailed to the facility.

(3) **Non-compliance letters.** A non-compliance letter may be written to the operator. A copy of the non-compliance letter is sent to the owner or registered agent, if applicable, with a copy of the monitoring report.

(4) **Return monitoring visit.** A return monitoring visit may be made if there is numerous, repeated, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.

(5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is under consideration. The witness may be an Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** The licensing staff provides the facility with Form 07LC037E, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of one or more children in care at risk.

(A) If the plan submitted by the operator is unacceptable to the licensing staff, the licensing staff negotiates and documents a revised plan.

(B) If the Notice to Comply is not submitted within the specified time period, the licensing staff contacts the operator and documents the conversation.

(C) If concerns exist or the owner is uncooperative, the licensing staff sends a letter stating that failure to complete a Notice to Comply may result in revocation of license, denial of the application, filing of an injunction, or Emergency Order.

(8) **Office conference.** The licensing staff may schedule an office conference with the owner of the facility. The licensing supervisor is present at the office conference. The licensing regional programs manager (RPM) is informed of the office conference and may be present, if necessary.

(A) Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered.

(B) The conference is documented on Form 07LC080E, which is signed by the licensing staff, the operator, and any witnesses present. This documentation includes a list of every person who is present, the purpose of the conference, and verification of correct documentation regarding ownership.

(C) A Notice to Comply is completed if one addressing these issues has not been completed recently.

(9) **Consent agreement.** OKDHS and the owner of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation, per OAC 340:110-1-9.5.

(10) **Revocation.** The licensing staff may recommend that the application to become licensed be denied or the license be revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children, per OAC 340:110-1-10.

(11) **Voluntary cease care.** With State Office approval, the owner is asked to voluntarily cease caring for children. The RPM is notified of all situations involving a request for voluntary cease care.

(12) **Voluntary closure.** With State Office approval, the owner is asked to voluntarily close the facility, per OAC 340:110-1-11.

(e) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that may place the health, safety, or well-being of children at imminent risk of harm, options to consider during consultation with the operator and the licensing supervisor are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance, for example, the staff person will not work at the facility pending the outcome of an investigation.

(2) The owner is asked to discontinue child care until the non-compliance is corrected or the investigation is complete.

(3) The owner is asked to voluntarily close the facility.

(4) The licensing staff requests an Emergency Order, per OAC 340:110-1-9.4, when immediate action is needed to protect children in a child care facility.

(5) The owner agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation, per OAC 340:110-1-9.5.

(6) The licensing staff may recommend that the application be denied or license be revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children, per OAC 340:110-1-10.

(7) An injunction may be requested when a child care facility is:

(A) unlicensed;

(B) on application status;

(C) licensed;

(D) violating an Emergency Order;

(E) operating during an appeal following revocation or denial and children are at risk; or

(F) violating the notice to cease care following revocation or denial of license.

(f) **Notification to supervisor when children are at risk.** If during a monitoring visit the licensing staff is concerned that the health, safety, or well-being of children is at imminent risk, the licensing supervisor or OCCS State Office staff is contacted immediately for an appropriate response.

(g) **Alternative method of compliance.** OCCS may approve an alternative method of compliance to a minimum licensing requirement. An alternative method of compliance may be authorized if licensing determines that the alternative method of compliance offers equal protection of health, safety, and well-being to children, meets the basic intent of the requirements for which the alternative compliance was requested, and does not violate statutory requirements.

(1) An applicant or licensee may submit a written request with any supporting documentation on Form 07LC061E, Alternative Compliance Request, to the licensing specialist. A separate request is submitted for each requirement for which an alternative method of compliance is requested.

(2) Licensing specialist completes Form 07LC105E, Alternative Compliance Referral, and submits all documentation to the statewide licensing coordinator or designee for authorization.

(3) Approval of an alternative method of compliance does not set a precedent, and is independently evaluated on the merits of each request.

(4) The facility's record of compliance is taken into consideration in determining whether to approve the request.

(5) An alternative method of compliance is not authorized for critical items affecting the health and safety of a child, such as exceeding licensed capacity or staff-child ratios, fire safety violations, or behavior and guidance violations.

(6) Written notice from OCCS, Form 07LC075E, Notice of Alternative Compliance, stating the nature of the exception, is posted with the license.

340:110-1-10.1. Child Care Restricted Registry

(a) **Legal basis.** Section 405.3 of Title 10 of the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish and maintain a Child Care Restricted Registry (Restricted Registry), which is named Joshua's List. Individuals identified as registrants are prohibited from licensure, ownership, employment, and/or residence in a licensed child care facility. The Restricted Registry search is required for:

(1) any individual making application for licensure to operate a child care facility;

(2) any individual signing the application as a household member;

(3) any individuals age 18 years or older, prior to their residence in a licensed child care facility, excluding residential facilities and child placing agencies; and

(4) any individuals to be employed by a licensed child care facility, including all caregivers, auxiliary staff, and substitute or assistant caregivers.

(b) **Registrants.** Individuals recorded on the Restricted Registry are identified as registrants. Registration may result after review by the restricted registry review committee and all appeals are exhausted when:

(1) a finding of abuse or neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, by an individual when the abuse or neglect occurred to children while in the care of a licensed child care facility;

(2) a denial or revocation of a child care facility license;

(3) a specified criminal history for individuals who have entered a plea of guilty, nolo contendere, no contest, or a conviction for the following felony offenses:

(A) child abuse or neglect;

(B) a crime against a child;

(C) a crime involving violence, including, but not limited to rape, sexual assault, or homicide;

(4) a specified criminal history for individuals who have entered a plea of guilty, nolo contendere, no contest, or a conviction within the five-year period preceding the application date for licensure, prior to employment and residence, for the following felony offenses:

(A) domestic abuse;

(B) a drug-related offense; or

(5) an individual required to register pursuant to Sex Offender Registration Act or Mary Rippy Violent Crime Offenders Act.

(c) **Restricted Registry search for facility owners.** Upon receipt of a complete application, the licensing specialist conducts a Restricted Registry search on the facility owner and Form 07LC101E, Restricted Registry Verification, is placed in the facility file. If owner is a:

(1) registrant, licensing documents contact with owner on Form 07LC080E, Licensing Services Supplemental Information, regarding their registration.

(2) non-registrant, procedures for processing a facility application are followed per OAC 340:110-1-6 or 340:110-1-45.

(d) **Restricted Registry search for child care facility owners, employees, and residents.** For individuals identified in (a)(1) - (4) of this Section, Form 07LC101E, dated within the last 30 days, is submitted to the licensing records office with Form 07LC096E, Criminal History Review Request.

(e) **Registration as a result of findings of abuse or neglect investigations by Child Welfare.** Licensing staff notifies the licensing records office upon receipt of substantiated or confirmed findings when the abuse or neglect occurred to children while in the care of a licensed child care facility. The licensing records office verifies appeal status before requesting investigation information from licensing for potential registrants identified in (a)(1) - (4) of this Section. Investigation information is then forwarded to the restricted registry review committee for consideration per ~~section(h)~~(i) of this Section.

(f) **Registration as a result of findings of abuse or neglect investigations by Office of Client Advocacy (OCA).** OCA submits investigations of abuse or neglect to the residential licensing programs manager who reviews the information. Information meeting registration criteria identified in (b)(1) of this Section is forwarded to the licensing records office supervisor. Investigation information is then forwarded to the restricted registry review committee for consideration per subsection (i). The licensing records office verifies OCA appeal status before requesting legal review.

(~~f~~g) **Registration as a result of a denial or revocation.** Procedures regarding the denial or revocation of a license are followed per OAC 340:110-1-10 or 340:110-1-52. A copy of the cease and desist letter and revocation or denial letter is forwarded to the licensing records office. Documentation relating to the denial and revocation is forwarded to the restricted registry review committee for consideration per ~~section (h)~~subsection (i).

(~~g~~h) **Registration as a result of a specified criminal history.** If a criminal history review conducted by the licensing records office reveals an individual is a potential registrant as indicated in (b)(3) - (5), and a waiver ~~process is complete~~has not been granted, all criminal background information is forwarded to the restricted registry review committee for consideration per ~~section (h)~~subsection (i).

(~~h~~i) **Restricted registry review committee.** The restricted registry review committee consists of five OKDHS staff who make a determination of registration within 30 days of receipt of information from the licensing records office.

(1) Criteria considered for registration includes the:

(A) age of the individual at the time of the offense(s);

(B) length of time since the offense(s) occurred;

(C) number and types of offenses for which the individual was convicted or findings made;

(D) circumstances surrounding commission of the offense(s) that demonstrate willful intent;

(E) likelihood the individual will re-offend; and

(F) other documentation submitted indicating that the health, safety, and well-being of children are or are not endangered.

(2) The review committee standard to determine registration by clear and convincing evidence includes consideration of:

(A) the individual's history of behavior likely to create a reasonable risk of harm to children; and

(B) whether the individual is unsafe with children; either alone or in a group.

(3) The determination is based upon a majority decision of the committee members.

(4) When registration is recommended by the review committee, registration information is forwarded to the licensing records office supervisor.

(j) **Restricted Registry Legal Review.** The licensing records office supervisor or designee submits registration information to OKDHS Legal Division requesting legal review for registration.

(~~i~~k) **Restricted Registry notification.** ~~Upon notification of the restricted registry review committee decision~~ Within five days of receipt of OKDHS Legal Division review, the licensing records office notifies the potential registrant on Form 07LC102E, Restricted Registry Notification. The notification:

(1) is sent by certified mail, return receipt requested; and

(2) advises the potential registrant of their;

(A) right to appeal within 30 days of receipt of notice; and

(B) failure to request a hearing, within the time frame specified, may result in registration per subsection ~~(k)~~(m) of this Section.

(~~j~~l) **Restricted Registry appeal process.** A request for an appeal is forwarded to the licensing records office.

(~~k~~m) ~~**Restricted Registry registration**~~**Registration.** When no appeal is requested within the specified timeframe or when an administrative decision becomes final, the licensing records office:

(1) mails Form 07LC103E, Restricted Registry Final Notification, to registrant's last known address;

(2) mails Form 07LC104E, Restricted Registry Notification to Child Care Facility, to the facility where registrant resides and/or is employed;

(3) notifies licensing staff regarding registration; and

(4) enters registrant information on the Restricted Registry database ~~within five business days~~.

(~~l~~n) **District Court appeal process.** Any registrant aggrieved by the decision may appeal to the District Court of the county in which the child care facility is maintained and operated by filing with the clerk of the court a verified petition. Notice of such appeal shall be served on the OKDHS Director within five days of the date of its filing.

(~~m~~o) **Request for registration removal.** A registrant may request removal after 60 months from the date of being recorded on the Restricted Registry. A request for removal from the Registry is forwarded to the licensing records office for submission to the restricted registry review committee. The restricted registry review committee makes a determination as to removal within 30 days of receipt of notice from the licensing records office.

(1) Criteria considered for removal includes, but is not limited to criteria in ~~section (h)~~ subsection (i)(1)(A) - (F) and:

(A) current criminal background review conducted within 30 days;

(B) statements of work and training history since registration;

(C) personal statement of rehabilitative efforts; and

(D) length of time on the Restricted Registry.

(2) A decision as to removal is based upon a majority decision of review committee members.

(~~n~~p) **Registration removal.** Licensing Records office provides notification to the registrant of the committee decision.

340:110-1-13. Unlicensed facilities

(a) **Legal basis and authority.** Pursuant to Section 405 of Title 10 of the Oklahoma Statutes, no child care facility may be operated or maintained in this state, unless licensed or given permission to operate by the Oklahoma Department of Human Services (OKDHS).

(b) **Procedure for investigating the operation of an unlicensed facility.** When information is received regarding the operation of an unlicensed facility, staff conducts a full monitoring visit no later than three facility business days to assess the necessity of a license.

(1) If care is being provided, staff informs the facility they have not been given permission to operate and they are in violation of the Oklahoma Child Care Facilities Licensing Act. During the visit the facility is informed on Form 07LC095E, Notice Regarding Unlicensed Care, that:

(A) care must cease by the end of the current business day unless imminent risk indicates the need for the facility to cease care immediately; or

(B) permission to operate may be granted when the facility:

(i) is in compliance with health and safety requirements without serious non-compliances as referenced in OAC 340:110-1-9.3;

(ii) has submitted a completed application in accordance with OAC 340:110-1-6; ~~and~~

(iii) provides all required background information per OAC 340:110-1-8.1; and

(~~iii~~iv) ~~meets~~has staff present who meet the following licensing requirements:

(I) ~~all required background information has been provided in accordance with OAC 340:110-1-8.1;~~

~~(II)~~ documented current cardio-pulmonary resuscitation and first aid certification ~~is documented~~;

(~~III~~II) required health and safety training ~~is~~ completed; and

(~~IV~~III) minimum educational qualifications for ~~all positions are met~~the position held.

(2) If a facility is not granted permission to operate, a follow-up visit is conducted within one facility business day to verify the termination of care and ~~when care of children has not ceased staff proceed with procedures in OAC 340:110-1-9.4.~~The follow-up visit timeframe may be extended up to five days with supervisory approval and is documented on Form 07LC080E, Licensing Services Supplemental Information. When care of children has not ceased, staff proceed per OAC 340:110-1-9.4.

(3) When the necessity of a license is not required, licensing staff documents the investigation of unlicensed operation on Form 07LC080E~~, Licensing Services Supplemental Information~~.

(c) **Documentation of Findings.** Following the unlicensed complaint investigation licensing staff proceed with procedures in OAC 340:110-1-9.2(k). All case staffings and discussions of case actions are documented on Form 07LC080E~~, Licensing Services Supplemental Information,~~ and maintained in the case file.

340:110-1-15. Grievance and complaint policy and procedure

(a) **Grievance and complaint policy.** The owner or director of a licensed child care facility may file a grievance or complaint regarding the application of any written or unwritten policy, rule, or regulation of the Oklahoma Department of Human Services (OKDHS)~~,~~ or any decision by an OKDHS employee ~~of OKDHS~~ that affects the facility. A grievance or complaint is not accepted concerning the denial or revocation of a child care facility license. The procedure for appealing this action is provided in the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 407]

(b) **Grievance or complaint procedure.** Persons ~~wishing~~wanting to file a ~~complaint~~grievance or ~~a~~

~~grievance~~complaint are encouraged to seek informal resolution of their concerns by contacting the appropriate licensing supervisor~~. Supervisory staff receiving a grievance or complaint will attempt~~, who attempts to resolve the matter.

(1) If a resolution cannot be reached at the local level or through verbal conversation with State Office staff, the grievant or complainant is requested to file a written request with the licensing supervisor.

(2) The licensing supervisor notifies the licensing regional programs manager (RPM) and statewide licensing coordinator that a formal grievance or complaint ~~orgrievance has been~~was filed and efforts were made to resolve the issue. The licensing supervisor responds to written grievances or complaints within ~~14~~10 working days ~~after~~of receipt.

(3) When the grievant or complainant is not satisfied with the proposed resolution, ~~the grievant~~ he or she may appeal ~~the grievance~~ to the RPM~~, statewide licensing coordinator, director of Oklahoma Child Care Services, associate director for programs, and OKDHS Director, in that order~~. The RPM responds to written grievances or complaints within 10 working days of receipt.

(4) When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the Child Care Advisory Committee (CCAC). The CCAC responds within 10 working days of receipt to the statewide licensing coordinator with advisement for resolution.

(5) The statewide licensing coordinator notifies the grievant or complainant of the Oklahoma Child Care Service (OCCS) decision within 10 working days of receipt of the CCAC advisement.

(6) When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the OCCS director, chief coordinating officer (CCO), and OKDHS Director, respectively. The OCCS director, CCO, and OKDHS Director each respond within 10 working days of receipt and the OKDHS Director's decision is final.

(~~4~~7) The grievant or complainant is requested to file only one written complaint. Referrals for resolution are made by the OKDHS staff involved in the response.

PART 3. LICENSING SERVICES - RESIDENTIAL CARE AND AGENCIES

340:110-1-44. Inquiries

(a) **Inquiries.** Inquiries regarding the licensing of residential child care facilities or child-placing agencies are referred to the licensing staff in whose geographical area the inquirer is located. Upon receipt of an inquiry, the licensing staff provides the inquirer with a copy of the applicable requirements and, when appropriate, refers facilities to other agencies involved in licensing residential child care facilities or child-placing agencies, such as the fire department, health department, and local city regulatory offices. When the inquirer has informed licensing they are currently providing care for children procedures in OAC 340:110-1-54.1 are followed. Licensing informs the inquirer they are not to provide care of children without permission to operate by Oklahoma Child Care Services (OCCS). When the inquirer indicates an interest in becoming licensed, the licensing staff:

(1) reviews the requirements with the inquirer to help him or her determine whether the requirements can be met;

(2) determines the qualifications of the inquirer to operate a facility; and

(3) provides consultation to assist in the development of a residential child care facility or child-placing agency that can provide quality care.

(b) **Tribal facilities.** Child care facilities on Indian tribal land do not require a state license, but may request licensure.

(c) **Federal facilities.** Facilities operated on military bases or on federal property are exempt.

340:110-1-46. Types of issuances

(a) **Six-month permit.** New residential child care facilities or child-placing agencies may be granted a six-month permit. If the facility was previously licensed at another location and had a pattern of compliance, the six-month permit may be waived.

(1) A complete monitoring visit documenting compliance with critical licensing requirements must be made not longer than 60 days prior to issuance of the six-month permit. The recommendation to issue a permit is made after all forms and inspections have been completed and the facility is in compliance with all requirements, including:

(A) criminal history investigations;
(B) tuberculosis (TB) tests;
(C) required number of qualified staff;
(D) required training;
(E) hazards indoors and outdoors;
(F) liability insurance coverage;
(G) fire safety; and
(H) other areas affecting children's safety.

(2) The items required to be on file for issuance of a six-month permit include:

(A) Form 07LC040E, Request for License - Child Placing Agency, Residential Child Care, and Children's Shelter;
(B) proof of ownership;
(C) list of current staff;
(D) Form 07LC041E, Staff Information - Child Care Facility;
(E) documentation of all required background investigations per OAC 340:110-1-51;
(F) TB test or chest x-ray results for direct care staff;
(G) State Fire Marshal's approval for residential facilities;
(H) health department approval for residential facilities;
(I) physical plant drawing for residential facilities;
(J) compliance review questionnaire with supporting documentation;
(K) monitoring reports; and

(L) Form 07LC060E, Residential Child Care Policy and Records Check

(3) During the six-month permit period, a minimum of three monitoring visits are completed to document that all requirements are met and to observe child care, where applicable.

(b) **Second and subsequent six-month permits.** If additional six-month permits are recommended, the procedures in (1) through (5) of this paragraph are followed.

(1) The licensing staff consults with the programs manager prior to recommending a second or subsequent permit.

(2) The licensing staff sends a letter to the applicant notifying the applicant of the recommendation each time a second or subsequent permit is recommended. The reason for the recommendation is clearly stated in the letter, with each area of non-compliance listed separately.

(3) If the additional six-month permit is due to repeated, numerous, or serious non-compliance with requirements, the licensing staff visits the facility at least monthly and is accompanied, when possible, by a witness. If at any point the non-compliance indicates the facility is unable or unwilling to meet licensing requirements, the programs manager is consulted to discuss negative actions.

(4) If requirements are met before the expiration of the six-month permit, the issuance of a license may be recommended.

(5) If children have not been in care on a regular basis during the previous year, the applicant is asked to withdraw the application for license.

(c) **License issuance.** When the licensing staff determines that the facility or agency is operating in compliance with the facility's or agency's own policy and procedures and in compliance with the licensing requirements, a recommendation is made to issue a license. Prior to recommending issuance of a license, the licensing staff completes a minimum of three monitoring visits. A monitoring visit must be made within ~~30~~60 days of the issuance date. A license is in effect unless it is revoked or the facility voluntarily closes.

340:110-1-47.2. Non-compliance with requirements

(a) **Documentation of non-compliance.** The licensing staff documents clearly and concisely on the monitoring report areas of non-compliance and the discussion with the operator.

(1) A plan of correction, including an agreed-upon time period for correction of the non-compliance, is documented on the monitoring report for each non-compliance or documentation indicates a plan of correction will be submitted by the executive or program director. If a previous non-compliance was not corrected by the agreed-upon time period, the non-compliance is documented again with a shorter plan of correction date.

(2) Immediate correction is required when the non-compliance has a direct impact on the health, safety, or well-being of a child(ren) in care.

(3) The licensing staff requests that the operator sign the monitoring report, explaining that the operator's signature indicates acknowledgment of information recorded.

(4) If the person in charge refuses to sign, the refusal is documented on the report.

(5) The operator is given a copy of the completed monitoring report.

(b) **Referrals to fire and health officials.** If non-compliance regarding fire or health requirements places children at risk of harm or remains uncorrected, the licensing staff requests an inspection by a fire, health, or Oklahoma Department of Environmental Quality (ODEQ) official.

(c) **Case management responses to non-compliant facilities.** The responses in this subsection may be used when there is repeated, numerous, or serious non-compliance.

(1) **Technical assistance.** Technical assistance is offered along with referrals to consultants or training resources, if necessary, to assist the operator in meeting and maintaining licensing requirements.

(2) **Follow-up phone call.** Phone calls are documented on Form 07LC080E, Licensing Services Supplemental Information, and a copy is mailed to the facility.

(3) **Non-compliance letter.** A non-compliance letter may be written to the operator. The licensing staff sends a copy of the monitoring report and non-compliance letter to the governing board or owner, if applicable.

(4) **Return monitoring visit.** A return monitoring visit may be made if there is repeated, numerous, or serious non-compliance with licensing requirements or when non-compliance places children at imminent risk of harm. If the non-compliance is associated with a specific time of day, such as understaffing after school or a lack of early morning supervision, the return visit is made at that approximate time.

(5) **Use of witnesses.** The licensing staff may be accompanied by a witness during monitoring visits if the facility has had numerous, repeated, or serious non-compliances or if denial or revocation of the license is being considered. The witness may be an Oklahoma Department of Human Services (OKDHS) employee or a representative from the health or fire department. The witness signs the monitoring report in the space provided.

(6) **Increased monitoring visits.** Licensing staff may increase the frequency of monitoring when there has been numerous, repeated, or serious non-compliance or when the need for additional technical assistance is indicated.

(7) **Notice to comply.** The licensing staff provides the facility with Form 07LC037E, Notice to Comply, on which the facility documents the plan of correction. Immediate correction may be required if the non-compliance places the health, safety, or well-being of a child(ren) in care at risk.

(A) If the plan submitted by the operator is unacceptable to the licensing staff, the staff negotiates and documents a revised plan.

(B) If the operator does not submit the response to Form 07LC037E within the specified time period, the licensing staff contacts the operator and documents

the conversation. If concerns exist or the owner is uncooperative, the licensing staff sends a letter stating that failure to complete Form 07LC037E may result in revocation of license, denial of the application, the filing of an injunction, or Emergency Order.

(8) **Office conference.** The licensing staff may schedule an office conference with the owner of the facility. The programs manager is present at the office conference. Areas of non-compliance and progress toward meeting the plan(s) of correction are reviewed and technical assistance is offered. The conference is documented on Form 07LC080E, which is signed by the licensing staff, the operator, and any witnesses present. This documentation includes a list of persons present, the purpose of the conference, and verification of correct documentation regarding ownership. Form 07LC037E is completed if one addressing these issues has not been completed recently.

(9) **Consent agreement.** OKDHS and the owner of the facility may enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.

(10) **Revocation.** The licensing staff recommends that the application for licensure be denied or license revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(11) **Voluntary cease care.** With State Office approval, the owner is asked to voluntarily cease caring for children. The programs manager is notified of all situations involving a request for voluntary cease care.

(12) **Voluntary closure.** The owner is asked to voluntarily close the facility.

(d) **Case management responses when children are at risk.** If the licensing staff documents non-compliance with requirements or is investigating a complaint that children may be at imminent risk of harm, options to consider during consultation with the operator and the programs manager are outlined in this subsection.

(1) The operator is asked to immediately correct the non-compliance; for example, the staff person will not work at the facility pending the outcome of an investigation.

(2) The owner is asked to voluntarily close the facility.

(3) The licensing staff requests an Emergency Order when immediate action is needed to protect children in a child care facility that is on permit, licensed, on notice of revocation or denial, or operating during an appeal following revocation or denial.

(4) The owner agrees to enter into a consent agreement whereby the facility agrees to specific conditions in lieu of license denial or revocation.

(5) The licensing staff recommends that the license be denied or revoked when numerous, repeated, or serious non-compliance with requirements has been observed and documented or the facility has failed to adequately protect children.

(6) An injunction may be requested when the residential facility or child-placing agency is:

(A) unlicensed;

(B) on application status;

(C) licensed;

(D) violating an Emergency Order;

(E) operating during an appeal following revocation or denial and children are at risk of harm; or

(F) violating the notice to cease care following denial or revocation of license.

340:110-1-54. Grievance and complaint policy and procedure

(a) **Grievance and complaint policy.** The owner, director, or administrator of a licensed child care facility may file a grievance or complaint regarding the enforcement of any written or unwritten policy, rule, or regulation of the Oklahoma Department of Human Services (OKDHS)~~,~~ or any decision by an OKDHS employee ~~of OKDHS~~ that affects the facility. A grievance or complaint is not accepted concerning the denial or revocation of a child care facility license. The procedure for appealing this action is provided for in the Oklahoma Child Care Facilities Licensing Act. [10 O.S. § 407]

(b) **Grievance or complaint procedure.** ~~A person who wishes~~Persons wanting to file a grievance or complaint ~~is~~are encouraged to seek informal resolution of their concerns by contacting the programs manager, who ~~will seek~~attempts to resolve the matter. ~~If a resolution is not reached at the this level, the grievant is requested to file a written request with the director of Oklahoma Child Care Services (OCCS). The director of OCCS responds to written grievances or complaints within 14 days after receipt. When the grievant or complainant is not satisfied with the proposed resolution, the grievance may be appealed to:~~

(1) ~~the associate director for programs; and~~If a resolution cannot be reached, the grievant or complainant is requested to file a written request with the programs manager.

(2) ~~the Director of OKDHS.~~The programs manager notifies the statewide licensing coordinator that a formal grievance or complaint was filed and efforts were made to resolve the issue. The programs manager responds to written grievances or complaints within 10 working days of receipt.

(3) When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the statewide licensing coordinator. The statewide licensing coordinator responds to written grievances or complaints within 10 working days of receipt.

(4) When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the Child Care Advisory Committee (CCAC). The CCAC responds within 10 working days of receipt to the Oklahoma Child Care Services (OCCS) director with advisement for resolution.

(5) The OCCS director notifies the grievant or complainant of the OCCS decision within 10 working days of receipt of the CCAC advisement.

(6) When the grievant or complainant is not satisfied with the proposed resolution, he or she may appeal to the

chief coordinating officer (CCO) and OKDHS Director, respectively. The CCO and OKDHS Director each respond within 10 working days of receipt and the OKDHS Director's decision is final.

(7) The grievant or complainant is requested to file only one written complaint. Referrals for resolution are made by the OKDHS staff involved in the response.

340:110-1-54.1. Unlicensed facilities

(a) **Legal basis and authority.** Pursuant to Section 405 of Title 10 of the Oklahoma Statutes, no child care facility may be operated or maintained in this state, unless licensed or given permission to operate by the Oklahoma Department of Human Services (OKDHS).

(b) **Procedures for investigating the operation of an unlicensed residential facility.** When information is received regarding the operation of an unlicensed residential facility ~~or child placing agency~~, staff conducts a full monitoring visit no later than three facility business days to assess the necessity of license.

(1) If care is being provided, staff informs the facility they have not been given permission to operate and they are in violation of the Oklahoma Child Care Facilities Licensing Act (Act). During the visit the facility is informed on Form 07LC095E, Notice Regarding Unlicensed Care, that:

(A) care must cease by the end of the current business day unless imminent risk indicates the need for the facility to cease care immediately; or

(B) permission to operate may be granted when the facility:

(i) is in compliance with health and safety requirements without serious non-compliances as referenced in OAC 340:110-1-46(a)(1);

(ii) has submitted a completed application in accordance with OAC 340:110-1-45; ~~and~~

(iii) provides all required background information per OAC 340:110-1-51; and

(~~iii~~iv) ~~meets~~has staff present who meet the following licensing requirements:

(I) ~~all required background information has been provided in accordance with OAC 340:110-1-51;~~

~~(II)~~ documented current cardio-pulmonary resuscitation and first aid certification ~~is documented, when applicable~~;

(~~III~~II) ~~required health and safety training is completed, when applicable~~ completed behavioral intervention training; and

(~~IV~~III) minimum educational qualifications for ~~all positions are met~~the position held.

(2) If a facility is not granted permission to operate, a follow-up visit is conducted within one facility business day to verify the termination of care ~~and when care of children has not ceased staff proceed with procedures in OAC 340:110-1-52(f)~~. The follow-up visit timeframe may be extended up to five days with programs manager approval and is documented on Form 07LC080E, Licensing Services Supplemental Information. When care of children has not ceased, staff proceed per OAC 340:110-1-52(f).

(3) When the necessity of a license is not required, licensing staff documents the investigation of unlicensed operation on Form 07LC080E~~, Licensing Services Supplemental Information~~.

(c) **Procedures for investigating the operation of an unlicensed child placing agency.** When information is received regarding the operation of an unlicensed child placing agency, staff makes contact with the agency representative within three agency business days to assess the necessity of license.

(1) If child placing activity is being provided, staff informs the agency they have not been given permission to operate and they are in violation of the Oklahoma Child Care Facilities Licensing Act (Act). Licensing staff document on Form 07LC080E:

(A) child placing activity must cease by the end of the current business day, unless imminent risk indicates the need for the agency to cease operation immediately; or

(B) permission to operate may be granted when the agency:

(i) has submitted a completed application per OAC 340:110-1-45;

(ii) provides all required background information per OAC 340:110-1-51; and

(iii) has staff who meet minimum educational qualifications for the position held.

(2) If an agency is not granted permission to operate, a follow-up visit is conducted within one agency business day to verify the termination of child placing activity. The follow-up visit timeframe may be extended up to five days with programs manager approval and is documented on Form 07LC080E. When child placing activity has not ceased, staff proceed per OAC 340:110-1-52(f).

(3) When the necessity of a license is not required, licensing staff documents the investigation of an unlicensed operation on Form 07LC080E.

(~~c~~d) **Documentation of Findings.** Following the unlicensed complaint investigation, licensing staff proceed with procedures in OAC 340:110-1-47.1(l). All case staffings and discussions of case action are documented on Form 07LC080E~~, Licensing Services Supplemental Information,~~ and maintained in the case file.

(~~d~~e) **Procedures for investigating unlicensed out of state child-placing agencies.**

(1) The licensing staff mails to the owner the licensing requirements and a letter that includes information about licensure and a request for a response within 14 days.

(2) If a response is not received within 14 days, several contacts are made or attempted to encourage the owner of an unlicensed facility to comply with the Act.

(3) If the owner fails to apply for licensure as required by the Act, the licensing staff consults with the programs

manager and statewide licensing coordinator for appropriate action which could include the issuance of an Emergency Order.

[OAR Docket #12-758; filed 5-25-12]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-746]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:1-1-4. Requests for Information [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1
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Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2012.
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to 365:1-1-4 updates the address and phone number of the Office of the Insurance Commissioner and now requires all requests for information from the public be in written form.
CONTACT PERSON:
Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

365:1-1-4. Requests for information

(a) The public may obtain information relating to insurance and regulation thereof by writing to: The Insurance Commissioner, ~~P. O. Box 53408~~, 3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma, ~~73152-3408~~73112,~~or by calling the Office of the Insurance Commissioner at (405) 521-2668 or 1-800-522-0071, Oklahoma City, Oklahoma or by appearing in person at the Office of the Insurance Commissioner in Oklahoma City, Oklahoma. Submissions or requests may be made by telephone, by writing, or by personal appearance, except such submissions and requests, the making of which are otherwise provided for in this Chapter.~~ 521-2828.

(b) ~~All written requests for information should be addressed to the Commissioner at his/her office.~~ Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service will be provided upon payment of the costs involved.

(c) Annually, subsequent to the end of the fiscal year, the Commissioner makes a report to the Governor summarizing his/her work during the year. Such reports are available for inspection and copies thereof may be obtained from the Commissioner. The Commissioner's rules of practice and procedure and a description of its organization and policy are published in the Oklahoma Register. Copies thereof may be obtained from the Commissioner upon request. The decisions of the Commissioner in adjudicative proceedings may be obtained upon request.

[OAR Docket #12-746; filed 5-25-12]

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

[OAR Docket #12-748]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General Provisions
365:10-1-15. Eliminating unfair discrimination on basis of children as single applicants [AMENDED]
365:10-1-16. Providing insurance policy information [NEW]
Part 3. Standardized Health Claim Forms
365:10-1-31. Definitions [AMENDED]
365:10-1-32. Requirements for use of HCFA Form 1500 and HCFA Form 1491 [AMENDED]
Subchapter 5. Minimum Standards; Contract Guidelines
Part 15. Small Employer Health Insurance Reform Regulation
365:10-5-150. Statement of purpose [AMENDED]
365: 10-5-155. Restrictions relating to premium rates [AMENDED]
365:10-5-164. Uniform Health Questionnaire [NEW]
Part 17. Actuarial Opinion and Memorandum Regulation
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]
Subchapter 29. External Review Regulations [NEW]
365:10-29-1. Purpose [NEW]
365:10-29-2. Applicability and Scope [NEW]
365:10-29-3. Definitions [NEW]
365:10-29-4. Notice of Right to an External Review and External Review Procedures [NEW]
365:10-29-5. Authorization to Disclose Protected Health Information [NEW]

365:10-29-6. External Review Requests [NEW]
365:10-29-7. Notice of Initial Determination [NEW]
365:10-29-8. Independent Review Organization Application [NEW]
365:10-29-9. Independent Review Organization Recordkeeping and Reporting Requirements [NEW]
365:10-29-10. Health Carrier Recordkeeping and Reporting Requirements [NEW]
Appendix PP. Notice of Appeal Rights [NEW]
Appendix QQ. External Review Request Form [NEW]
Appendix RR. Application for Registration as an Independent Review Organization [NEW]
Appendix SS. Independent Review Organization External Review Annual Report Form [NEW]
Appendix TT. Health Carrier External Review Annual Report Form [NEW]
Appendix UU. Policy Holder's Authorization to Release Insurance Policy Information to Agent of Record [NEW]
Appendix VV. Uniform Health Questionnaire [NEW]

AUTHORITY:

Insurance Commissioner; 36 O.S. § 307.1, 36 O.S. § 4061, 36 O.S. § 6475.5(A)(3), 36 O.S. § 6475.6(A)(2), 36 O.S. § 6475.12(G), 36 O.S. § 6526

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Superseded rules:
Subchapter 29. External Review Regulations [NEW]
365:10-29-1. Purpose [NEW]
365:10-29-2. Applicability and Scope [NEW]
365:10-29-3. Definitions [NEW]
365:10-29-4. Notice of Right to an External Review and External Review Procedures [NEW]
365:10-29-5. Authorization to Disclose Protected Health Information [NEW]
365:10-29-6. External Review Requests [NEW]
365:10-29-7. Notice of Initiation Determination [NEW]
365:10-29-8. Independent Review Organization Application [NEW]
365:10-29-9. Independent Review Organization Recordkeeping and Reporting Requirements [NEW]
365:10-29-10. Health Carrier Recordkeeping and Reporting Requirements [NEW]
Appendix PP. Notice of Appeal Rights [NEW]
Appendix QQ. External Review Request Form [NEW]
Appendix RR. Application for Registration as an Independent Review Organization [NEW]
Appendix SS. Independent Review Organization External Review Annual Report Form [NEW]
Appendix TT. Health Carrier External Review Annual Report Form [NEW]
Gubernatorial approval:
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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 1. General Provisions
Part 1. General Provisions
365:10-1-15. Eliminating unfair discrimination on basis of children as single applicants [AMENDED]
Gubernatorial approval:
December 5, 2011
Register publication:
29 Ok Reg 253
Docket number:
11-1193

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The definition of "qualifying event" was amended in 365:10-1-15 to encourage insurers issuing individual accident and health policies within the state to participate in an annual open enrollment period for children under the age of 19. During the annual open enrollment period, children under the age of (19) shall be offered coverage on a guaranteed issue basis, without any limitations or riders based on health status.

New rule 365:10-1-16 designates that insurers shall use the "Policy Holder's Authorization To Release Insurance Policy Information To Agent Of Record" form, specified in Appendix UU, or a substantially similar form to comply with 36 O.S §1435.41. 365:10-1-31 and 32 are amended to change reference from ICD 9 to ICD 10.

The amendment to 365:10-5-150 deletes a reference to the reinsurance program because it was legislatively repealed in 2010. The amendment to 365:10-5-155 removes group size as a case characteristic because 36 O.S. § 6512(7) does not permit group size as a case characteristic. Pursuant to 36 O.S. § 6519(D), new rule 365:10-5-164 requires all small employer carriers that obtain health status information from a small employer to use the uniform health questionnaire specified in Appendix VV prior to offering coverage. The purpose of the amendment to 365:10-5-177 is to avoid duplicative procedure by requiring the appointed actuary to only submit the regulatory asset adequacy issues summary to the insurance company's domestic regulator.

The new Subchapter 29 creates rules for the implementation and regulation of the Uniform Health Carrier External Review Act. 365:10-29-1 sets forth the purpose of new subchapter 29. 365:10-29-2 sets forth the applicability and scope of subchapter 29. 365:10-29-3 sets forth that all terms used in subchapter 29 shall have the same meaning as defined in 36 O.S. § 6475.4(B). 365:10-29-4 provides for the manner a health carrier shall provide notice as set out in the Notice of Appeal Rights form in Appendix PP. 365:10-29-5 requires that health carriers providing notice shall provide a form authorizing the health care provider to disclose protected health information as set out in the Oklahoma State Department of Health Standard Authorization form, ODH 206, or in the alternative, a form that complies with 45 CFR § 164.508 and 43A O.S. § 1-109. 365:10-29-6 provides for the manner a covered person or authorized representative shall request an external review as set out in the External Review Request form in Appendix QQ. 365:10-29-7 provides that a Notice of Initial Determination shall be made in writing to the same address as the External Review Request form in Appendix QQ. 365:10-29-8 references the Application for Registration as an Independent Review Organization form in Appendix RR as the application to be used by independent review organizations seeking approval to conduct external reviews. 365:10-29-9 relates to the recordkeeping and reporting requirements that each independent review organization shall follow as set out in the Independent Review Organization External Review Annual Report form in Appendix SS. 365:10-29-10 relates to the recordkeeping and reporting requirements each health carrier shall follow as set out in the Health Carrier External Review Annual Report form in Appendix TT.

CONTACT PERSON:

Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL PROVISIONS

365:10-1-15. Eliminating unfair discrimination on basis of children as single applicants

(a) **Purpose.** The purpose of this section is to eliminate the act of denying benefits or coverage unfairly in the issuance, terms and conditions of insurance contracts and in underwriting criteria of insurance carriers. It is not intended to prohibit reasonable and justifiable differences in premium rates based upon sound actuarial principles or actual or reasonably anticipated experience.

(b) **Definitions.**

(1) "Child only" policy means an individual health benefit policy ~~issued on or after September 23, 2010,~~ which provides coverage to an individual under the age of nineteen (19). This shall not include health benefit policies that cover children under the age of nineteen (19) as a dependent;

(2) "Insurer" includes:

(A) every person engaged in the business of making contracts of insurance or indemnity,

(B) a nonprofit hospital service and medical indemnity corporation, and

(C) a health maintenance organization; and

(3) "Qualifying event" ~~includes birth~~means adoption, or a~~an involuntary loss of coverage due to marriage of a child's parent, dissolution of a parent's marriage, death of a parent, loss of employer sponsored insurance, loss of eligibility under the Oklahoma Medicaid Program,~~loss of existing health insurance coverage, including loss of eligibility in the SoonerCare or SoonerStart programs, 56 O.S. §§ 1010.1 through 1010.13 and 1011.1 through 1011.11, ~~entry of a valid court order mandating the child be covered, or loss of other existing coverage~~ for any reason other than fraud, misrepresentation or failure to pay premium. "Qualifying event" shall also mean entry of a valid court order mandating the child be covered if there is no employer sponsored coverage available to the parent ordered to provide health insurance coverage to the child.

(c) **Enrollment.**

(1) Enrollment only allowed during certain ~~periods~~period.

(A) Insurers issuing child only policies on or after September 23, 2010 shall only accept applications for coverage during the open enrollment ~~periods~~period outlined in this section.

(B) Enrollment outside the open enrollment ~~periods~~period shall be prohibited, except upon the occurrence of a qualifying event.

~~(2) For the year 2011, insurers offering child only policies shall hold an open enrollment period from July 15, 2011 through August 15, 2011. During this open enrollment period, all children under the age of nineteen (19) shall be offered coverage on a guaranteed issue basis, without any limitations or riders based on health status. Insurers shall use such rates as have been filed and approved by the Insurance Commissioner.~~

(2~~3~~) Beginning January 1, 2012, insurers offering child only policies shall hold an open enrollment period that begins on June 1 and ends on July 31 each year.~~each January and July, for the duration of the entire month.~~ During ~~these~~the annual open enrollment ~~periods~~ period, ~~all~~ children under the age of nineteen (19) shall be offered coverage on a guaranteed issue basis, without any limitations or riders based on health status. ~~Insurers shall use such rates as have been filed an d approved by the Insurance Commissioner~~.

(3~~4~~) Notice of the open enrollment opportunity and open enrollment dates for new applicants, as well as the opportunity to enroll due to a qualifying event, shall be displayed prominently on the insurer's website throughout the year.

(4~~5~~) Applications for coverage during an open enrollment period shall become effective on the first day of the month following receipt of the completed application, except that if mutually agreed upon by the applicant and the insurer an alternative effective date may be selected.

(5~~6~~) ~~Nothing contained in this section shall alter the ability of an applicant to obtain a child only policy outside the open enrollment period upon the occurrence of a qualifying event.~~ Non-health eligibility underwriting rules may be applied to child-only coverage, provided such eligibility rules are uniformly applied to all applicants applying for child-only coverage.

(6) Insurers shall use such rates as have been filed and approved by the Insurance Commissioner.

(~~e~~d) **Insurer participation.** Only insurers that participate in the most recent open enrollment period shall be permitted to write child only policies. Any insurer not participating in the most recent open enrollment period shall be prohibited from issuing child only policies until the commencement of the next subsequent open enrollment period, regardless of whether the policy is issued as a result of a qualifying event.

(~~f~~e) **Penalty for violations.** Noncompliance with this section may result, after proper notice and hearing, in an administrative action and penalty.

365:10-1-16. Providing insurance policy information

(a) An insurer shall provide to any insurance producer authorized to sell life insurance products, whose appointment has been terminated for any reason other than the reasons set forth in 36 O.S. § 1435.13 and who is still the agent of record or servicing agent and has not been replaced by another servicing agent upon termination, information relating to the policy of the person who purchased a product from such producer if the insured has signed a form authorizing the release of the information.

(b) This requirement does not apply to any policy sold or serviced by the insurance producer while associated with the insurer's captive distribution system.

(c) Insurers shall use the "Policy Holder's Authorization To Release Insurance Policy Information To Agent Of Record" specified in Appendix UU or a substantially form to comply with this requirement.

PART 3. STANDARDIZED HEALTH CLAIM FORMS

365:10-1-31. Definitions

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

"ADA-1990 Dental Claim Form" means the uniform dental claim form approved by the American Dental Association for use by dentists.

"CDT-1 Codes" means the current dental terminology, and its successors, required by the American Dental Association.

"CPT-4 Codes" means the current procedural terminology published by the American Medical Association.

"HCFA" means the federal Health Care Financing Administration of the United States Department of Health and Human Services.

"HCFA Form 1491" means the health insurance claim form and its electronic successor or equivalent published by HCFA for use by health care practitioners to be used in filing claims for transportation and/or ambulance services.

"HCFA Form 1500" means the health insurance claims form and its electronic successor or equivalent published by HCFA for use by health care practitioners.

"HCFA Form UB-82" means the health insurance claim form and its electronic successor or equivalent published by HCFA for use by hospitals.

"HCFA Form UB-92" means the health insurance claim form and its electronic successor or equivalent published by HCFA for use by hospitals.

"HCPCS" means HCFA's current common procedure coding system.

"Health care practitioner" means:

(A) a chiropractor licensed under 59 O.S. §161.1 et seq.,

(B) a corporation or partnership of health care practitioners as defined in this section and licensed under 59 O.S. §510,

(C) a dentist licensed under 59 O.S. §328.60 et seq.,

(D) a nurse licensed under 59 O.S. §567.1 et seq.,

(E) a certified registered nurse anesthetist licensed under 59 O.S. §567.51,

(F) a nurse-midwife licensed under 59 O.S. §577.1 et seq.,

(G) an ophthalmologist licensed under 59 O.S. §481 et seq.,

(H) an optometrist licensed under 59 O.S. §581 et seq.,

(I) a physician licensed under 59 O.S. §481 et seq.,

(J) a podiatrist licensed under 59 O.S. §135.1 et seq.,

(K) a psychologist licensed under 59 O.S. §1351 et seq.,

(L) therapists:

(i) a speech therapist licensed under 59 O.S. §1601 et seq.,

(ii) a physical therapist licensed under 59 §887.1 et seq.,

(iii) an occupational therapist licensed under 59 O.S. §888.1 et seq.

(M) an osteopath licensed under 59 O.S. §620 et seq.,

(N) a licensed social worker under 59 O.S. §1261.1 et seq.,

(O) a licensed professional counselor licensed under 59 O.S. §1901 et seq.

"Hospital" means a hospital as defined in 63 O.S. §§1-701.

"ICD-~~9~~10~~-CM~~ Codes" means the current disease codes in the international classification of diseases published by the United States Department of Health and Human Services.

"Third party payor" means a person that administers or provides reimbursement for health care benefits on an expense incurred basis including:

(A) Health Maintenance Organization issued a certificate of authority in accordance with 63 O.S. §2501, et seq.,

(B) health insurer or nonprofit health service plan authorized to offer health insurance policies or contracts in this State in accordance with 36 O.S. §2601, et seq., or

(C) third party administrator registered under 36 O.S. §1441 et seq.

365:10-1-32. Requirements for use of HCFA Form 1500 and HCFA Form 1491

(a) Health care practitioners shall use the HCFA Form 1500 and instructions provided by HCFA for use of the HCFA Form 1500 when filing claims with third party payors for professional services. HCFA Form 1491 may be used instead of the HCFA Form 1500 when filing claims for transportation and/or ambulance services.

(b) The requirement set forth in 365:10-1-32(a) does not apply to:

(1) dental services which are billed by dentists using the ADA-1990 Dental Claim Form and CDT-1 Codes, or

(2) pharmacists or pharmacies which are filing claims for prescription drugs.

(c) A third party payor may not require a health care practitioner to use any coding system for the filing of claims for health care services other than the following:

(1) HCPCS Codes,

(2) ICD-~~9~~10~~-CM~~ Codes, or

(3) CPT Codes.

(d) Except as provided in 365:10-1-36(c), a third party payor may not require a health care practitioner to use any other description with a code or to furnish additional information with the initial submission of a HCFA Form 1500 except under the following circumstances:

(1) when the procedure code used describes a treatment or service which is not otherwise classified, or

(2) when the procedure code is followed by modifiers in which case the practitioner may use the HCFA Form 1500 to explain the modifiers.

(e) A health care practitioner may use the HCFA Form 1500 to indicate the form is an amended version of a form previously submitted to the third party payor by inserting the word "amended" in Box 19, currently titled "Reserved for Local Use".

(f) A health care practitioner whose billing is based on the amount of time involved shall indicate the number of units in Box 24G, currently titled "Days or Units", of the HCFA Form 1500 if it is not used to specify the number of days of treatment.

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 15. SMALL EMPLOYER HEALTH INSURANCE REFORM REGULATION

365:10-5-150. Statement of purpose

(a) This Part is intended to implement the provisions of the Small Employer Health Insurance Reform Act. The general purposes of the Act and this Part are to provide for the availability of health insurance coverage to small employers, regardless of their health status or claims experience; to regulate insurer rating practices and establish limits on differences in rates between health benefit plans; to ensure renewability of coverage; to establish limitations on underwriting practices, eligibility requirements and the use of preexisting condition exclusions; to provide for development of "basic" and "standard" health insurance plans to be offered to all small employers; ~~to provide for establishment of a reinsurance program~~ to direct the basis of market competition away from risk selection and toward the efficient management of health care; and to improve the overall fairness and efficiency of the small group health insurance market.

(b) The Act and this Part are intended to promote broader spreading of risk in the small employer marketplace. The Act and Part are intended to regulate all health benefit plans sold to small employers, whether sold directly or through associations or other groupings of small employers. Carriers that provide health benefit plans to small employers are intended to be subject to all of the provisions of the Act and this Part.

365:10-5-155. Restrictions relating to premium rates

(a) **Separate rate manuals required.**

(1) A small employer carrier shall develop a separate rate manual for each class of Business. Base premium rates and new business premium rates charged to small employers by the small employer carrier shall be computed solely from the applicable rate manual developed pursuant to 365:10-5-155(a). To the extent that a portion of the premium rates charged by a small employer carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2) **Modification of rating method requirements.**

(A) A small employer carrier shall not modify the rating method used in the rate manual for a class of business until the change has been approved as provided in 365:10-5-155(a)(2). The Commissioner may approve a change to a rating method if the Commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this Part.

(B) A carrier may modify the rating method for a class of business only with priorapproval of the Commissioner. A carrier requesting to change the rating method for a class of business shall make a filing with the Commissioner at least thirty (30) days prior or the proposed date of the change. The filing shall contain at least the following information:

(i) The reasons the change in rating method is being requested;

(ii) A complete description of each of the proposed modifications to the rating method;

(iii) A description of how the change in rating method would affect the premium rates currently charged to small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals (and a description of the types of groups or individuals) whose premium rates may change by more than ten percent (10%) due to the proposed change in rating method (not generally including increases in premium rates applicable to all small employers in a health benefit plan);

(iv) A certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) A certification from a qualified actuary that the proposed change in rating method would not produce premium rates for small employers that would be in violation of 36 O.S.Supp.1994, §6515.

(C) For the purpose of 365:10-5-155 a change in rating method shall mean:

(i) A change in the number of case characteristics used by a small employer carrier to determine premium rates for health benefit plans in a class of business;

(ii) A change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(iii) A change in the method of allocating expenses among health benefit plans in a class of business; or

(iv) **A "ten percent charge in premium" test.**

(I) A change in rating factor with respect to any case characteristic if the change would produce a change in premium for any small employer that exceeds ten percent (10%).

(II) For the purpose of 365:10-5-155 (a)(2)(C)(iv)(I), a change in a rating factor considered over a twelve (12) month period. If a small employer carrier changes rating factors with respect to more than one case characteristic in a twelve (12) month period, the carrier shall consider the cumulative effect of all such changes in applying the ten percent (10%) test under 365:10-5-155(a)(2)(C)(iv)(I).

(b) **Case characteristics and rate factors.**

(1) The rate manual developed pursuant to 356:10-5-155(a) shall specify the case characteristics and rate factors to be applied by the small employer carrier in establishing premium rates for the class of business.

(2) A small employer carrier may not use case characteristics other than age, gender, industry, geographic area, and family composition ~~and group size~~, as specified in 36 O.S.Supp.1994, §6512(7), without the prior approval of the Commissioner. A small employer carrier seeking such an approval shall make a filing with the Commissioner for a change in rating method under 365:10-5-155(a)(2).

(3) A small employer carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of a small employer.

(4) The rate manual developed pursuant to 365:10-5-155(a) shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(5) Differences among base premium rates for health benefit plans shall be based solely upon the reasonable and objective differences in the design and benefits of the health benefit plans and shall not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan. A small employer carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical small employer groups vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(6) The rate manual developed pursuant to 365:10-5-155(a) shall provide for premium rates to be developed in a two step process. In the first step, a base premium rate shall be developed for the small employer group without regard to any risk characteristics of the group. In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of 36 O.S.Supp.1994, §6515, to reflect the risk characteristics of the group.

(7) A premium charged to a small employer for a health benefit plan shall not include a separate application fee, underwriting fee, or any other separate fee or charge.

(8) A small employer carrier shall allocate administrative expenses to the basic and standard health benefit plans on no less favorable of a basis than expenses are allocated to other health benefit plans in the class of business. The rate manual developed pursuant to 365:10-5-155(a) shall describe the method of allocating administrative expenses to the health benefit plans in the class of business for which the manual was developed.

(9) Each rate manual developed pursuant to 365:10-5-155(a) shall be maintained by the carrier for a period of six (6) years. Updates and changes to the manual shall be maintained with the manual.

(10) The rate manual and rating practices of a small employer carrier shall comply with any guidelines issued by the Commissioner.

~~(c) If group size is used as a case characteristic by a small employer carrier, the highest rate factor associated with a group size classification shall not exceed the lowest rate~~

(~~d~~c) **The restrictions related to changes in premium rates in 36 O. S.Supp.1994, §6515(A)(3) and (7), shall be applied as follows:**

(1) A small employer carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(2) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of 36 O.S.Supp.1994, §6515(A)(3)(c) and 36 O.S.Supp.1994, §6515(A)(7)(a).

(3) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the small employer carrier is no longer enrolling new small employers for the purposes of 36 O.S.Supp.1994, §6515(A)(3)(c) and 36 O.S.Supp.1994, §6515(A)(7)(a).

(4) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than twenty percent (20%), the carrier shall make a filing with the Commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made within thirty (30) days of the beginning of the rating period.

(5) A small employer carrier shall keep on file for a period of at least six (6) years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(~~e~~d) **Revised premium rate.**

(1) Except as provided in 365:10-5-155(e)(2) thru (4), a change in premium rate that is no more than the following:

(A) The base premium rate for the small employer (as shown in the rate manual as revised for the rating period), multiplied by

(B) One plus the sum of:

(i) The risk load applicable to the small employer during the previous rating period, and

(ii) Fifteen percent (15%) (prorated for periods of less than one year).

(2) In the case of a health benefit plan into which a small employer carrier is no longer enrolling new small employers, a change in premium rate for a small employer shall produce a revised premium rate that is no more than the following:

(A) The base premium rate for the small employer given its present composition and as shown in the rate manual in effect for the small employer at the beginning of the previous rating period, multiplied by

(B) One plus the lesser of:

(i) The change in the base rate or

(ii) The percentage change in the new business premium for the most similar health benefit plan into which the small employer carrier is enrolling new small employers, multiplied by

(C) One plus the sum of:

(i) The risk load applicable to the small employer during the previous rating period and

(ii) Fifteen percent (15%) (prorated for periods of less than one year).

(3) In the case of a health benefit plan described in 36 O.S.Supp.1994, §6515(A)(6), if the current premium rate for the health benefit plan exceeds the ranges set forth in 36 O.S.Supp.1994, §6515(A), the formulae set forth in 365:10-5-155(e)(1) and (2) will be applied as if the fifteen percent (15%) adjustment provided in 365:10-5-155(e)(1)(B)(ii) and 365:10-5-155(e)(2)(C)(ii) were a zero percent adjustment.

(4) Notwithstanding the provisions of 365:10-5-155(e)(1) and (2), a change in premium rate for a small employer shall not produce a revised premium rate that would exceed the limitations on rates provided in 36 O.S.Supp.1994, §6515(A)(2).

(~~f~~e) **Taft-Hartley trust waiver request.**

(1) A representative of a Taft-Hartley trust (including a carrier upon the written request of such a trust) may file in writing with the Commissioner a request for the waiver of application of the provisions of 36 O.S.Supp.1994, §6515(A), with respect to such trust.

(2) A request made under 365:10-5-155(f)(1) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(A) Adversely affect the participants and beneficiaries of the trust; and

(B) Require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

365:10-5-164. Uniform Health Questionnaire

(a) Small employer carriers are not required to obtain health status information from a small employer prior to offering coverage to that small employer; however, if a small employer carrier seeks to obtain health status information for any reason, the carrier must use the form specified in Appendix VV.

(b) Small employer carriers are required to accept and use the uniform health questionnaire specified in Appendix VV beginning on the date that is six months after the effective date of this rule section. Small employer carriers may not vary the content of the form and may not ask for any other health status information from a small employer or its employees.

(c) A small employer carrier must accept a copy of the uniform health questionnaire as though it were an original.

(d) A small employer carrier shall consider information in a Uniform Questionnaire current for no less than 60 days after the date it is signed by the employee. During that time, no small employer carrier may require an employee to fill out the Uniform Health Questionnaire again or to affirm that the information is current.

(e) In connection with the issuance of coverage, the small employer carrier may require a small employer to complete the carrier's unique application for coverage, but that application may not include any health status inquiry or question related to the health of an employee or dependent.

PART 17. ACTUARIAL OPINION AND MEMORANDUM REGULATION

365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis

(a) **General.**

(1) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the Insurance Department or subject to automatic filing with the Commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule 365:10-5-173(b) of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

(5) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection (c). The regulatory asset adequacy issues summary will be submitted to the company's domestic regulator no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) **Details of the memorandum documenting asset adequacy analysis.** When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Rule 365:10-5-173(d) of this regulation and any additional standards under this regulation. It shall specify:

(1) For reserves:

(A) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(B) Source of liability in force;

(C) Reserve method and basis;

(D) Investment reserves;

(E) Reinsurance arrangements

(F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(G) Documentation of assumptions to test reserves for the following (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.):

(i) Lapse rates (both base and excess);

(ii) Interest crediting rate strategy;

(iii) Mortality;

(iv) Policyholder dividend strategy;

(v) Competitor or market interest rate;

(vi) Annuitization rates;

(vii) Commissions and expenses; and

(viii) Morbidity.

(2) For assets:

(A) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(B) Investment and disinvestment assumptions;

(C) Source of asset data;

(D) Asset valuation bases;

(E) Documentation of assumptions made for (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.):

(i) Default costs;

(ii) Bond call function;

(iii) Mortgage prepayment function;

(iv) Determining market value for assets sold due to disinvestment strategy; and

(v) Determining yield on assets acquired through the investment strategy.

(3) Analysis basis:

(A) Methodology;

(B) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

(C) Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(D) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(E) Effect of federal income taxes, reinsurance and other relevant factors.

(4) Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(5) Summary of results; and

(6) Conclusions.

(c) **Details of the regulatory asset adequacy issues summary.**

(1) The regulatory asset adequacy issues summary shall include:

(A) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(C) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(D) Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

(E) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

(F) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(d) **Conformity to standards of practice.** The memorandum shall include the statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

(e) **Use of assets supporting the interest maintenance reserve and the asset valuation reserve.**

(1) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

(2) The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(f) **Documentation.** The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

SUBCHAPTER 29. EXTERNAL REVIEW REGULATIONS

365:10-29-1. Purpose

The purpose of this subchapter is to set forth rules regarding external review regulations as authorized by the Uniform Health Carrier External Review Act ("the Act"), 36 O.S. § 6475.1 et seq. The general purposes of the Act and this Subchapter are to provide uniform standards for the establishment and maintenance of external review procedures to assure that covered persons have the opportunity for an independent review of an adverse determination or final adverse determination, as defined in the Act.

365:10-29-2. Applicability and scope

This Subchapter shall apply to all health carriers, except as excluded from the Act by 36 O.S. § 6475.4(B).

365:10-29-3. Definitions

For the purpose of this Subchapter, all terms shall have the meanings set forth in 36 O.S. § 6475.3.

365:10-29-4. Notice of right to an external review and external review procedures

A health carrier providing notification of the right of a covered person to request an external review pursuant to 36 O.S. § 6475.5(A) shall either provide the notice contained in Appendix PP or provide a notice no longer than two pages which includes substantially similar language in a font size no smaller than 10 point.

365:10-29-5. Authorization to disclose protected health information

A health carrier providing an authorization form to a covered person regarding the disclosure of protected health information pursuant to 36 O.S. § 6475.5(B)(3) shall either provide the form as set out in the Oklahoma State Department of Health Standard Authorization, ODH 206, which may be accessed at http://www.ok.gov/health/Organization/HIPAA Privacy Rules/Oklahoma Standard Authorization on forms.html, or, in the alternative, a form that complies with 45 CFR § 164.508 and 43A O.S. § 1-109.

365:10-29-6. External review requests

A covered person or authorized representative requesting an external review pursuant to 36 O.S. § 6475.6 shall do so by submission of the External Review Request Form as set out in Appendix QQ.

365:10-29-7. Notice of initial determination

A notice of initial determination issued pursuant to Section 6475.8(C), 6475.9(B), 6475.10(A), or 6475.10(C) of Title 36 shall, in addition to providing notice of a right to appeal external review ineligibility to the Commissioner, provide that appeals shall be made in writing to the Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56th Street, Suite 100, Oklahoma City, OK, 73112-4511.

365:10-29-8. Independent review organization application

An independent review organization seeking approval to conduct external reviews pursuant to 36 O.S. § 6475.12(D) shall submit the application in Appendix RR as instructed, including all materials required by the application. Approval by this application will be effective until December 31 of the calendar year following the year of receipt for all new applications, and for two years following the expiration of the current approval for all renewals.

365:10-29-9. Independent review organization recordkeeping and reporting requirements

Each independent review organization approved to conduct external reviews pursuant to 36 O.S. § 6475.12(D) shall maintain written records for the information required by 36 O.S. § 6475.15(A)(3) and Appendix SS, and shall submit Appendix SS within 31 calendar days of the end of each calendar year.

365:10-29-10. Health carrier recordkeeping and reporting requirements

Each health carrier subject to the Act shall maintain written records for the information required by 36 O.S. § 6475.15(B)(3) and Appendix TT, and each health carrier that has received at least one external review request during the calendar year shall submit Appendix TT within 31 calendar days of the end of each calendar year.

APPENDIX PP. NOTICE OF APPEAL RIGHTS [NEW]

NOTICE OF APPEAL RIGHTS

You have a right to appeal any decision we make that denies payment on your claim or your request for coverage of a health care service or treatment.

You may request more explanation when your claim or request for coverage of a health care service or treatment is denied or the health care service or treatment you received was not fully covered.

Contact[1] us when you:

- Do not understand the reason for the denial;
- Do not understand why the health care service or treatment was not fully covered;
- Do not understand why a request for coverage of a health care service or treatment was denied;
- Cannot find the applicable provision in your Benefit Plan Document;
- Want a copy (free of charge) of the guideline, criteria or clinical rationale that we used to make our decision; or
- Disagree with the denial or the amount not covered and you want to appeal.

If your claim was denied due to missing or incomplete information, you or your health care provider may resubmit the claim to us with the necessary information to complete the claim. [1]

Appeals: All appeals for claim denials (or any decision that does not cover expenses you believe should have been covered) must be sent to [INSERT ADDRESS OF WHERE APPEALS SHOULD BE SENT TO THE HEALTH CARRIER] within **180 days** of the date you receive our denial.[2] We will provide a full and fair review of your claim by individuals associated with us, but who were not involved in making the initial denial of your claim. You may provide us with additional information that relates to your claim and you may request copies of information that we have that pertains to your claims. We will notify you of our decision in writing. Once our internal appeal process is exhausted (or waived by us), you may be entitled to file a request for external review.[3]

External Review[3]**:** We have denied your request for the provision of or payment for a health care service or course of treatment. You may have a right to have our decision reviewed by independent health care professionals who have no association with us if our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you request by submitting a request for external review within **4 months** after receipt of this notice to the Oklahoma Insurance Department, which can be contacted by mail at 3625 NW 56th Street, Oklahoma City, OK, 73112-4511, or by phone at 800-522-0071 or 405-521-2828. For standard external review, a decision will be made within **45 days** of receiving your request. If you have a medical condition that would seriously jeopardize your life or health or would jeopardize your ability to regain maximum function if treatment is delayed, you may be entitled to request an **expedited external review** of our denial. If our denial to provide or pay for health care service or course of treatment is based on a determination that the service or treatment is experimental or investigational, you also may be entitled to file a request for external review of our denial. For details, please review your Benefit Plan Document, contact us or contact your state insurance department.[1]

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[1] See address and telephone number on the enclosed Explanation of Benefits if you have questions about this notice.

[2] Unless your plan or any applicable state law allows you additional time.

[3] See your Benefit Plan Document for your state's appeal process and to determine if you're eligible to request an external review in your state (e.g. some state appeal processes require you to complete your insurer's appeal process before filing an external review request unless waived by your insurer; while some states do not have such a requirement).

APPENDIX QQ. EXTERNAL REVIEW REQUEST FORM [NEW]

This **EXTERNAL REVIEW REQUEST FORM** must be filed with the Oklahoma Insurance Department within **FOUR (4) MONTHS** after receipt from your insurer of a denial of payment on a claim or request for a health care service or treatment.

EXTERNAL REVIEW REQUEST FORM

APPLICANT NAME _____

Please Check One: ☐ Covered person/Patient ☐ Authorized Representative

COVERED PERSON/PATIENT INFORMATION

Covered Person Name: _____

Patient Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Covered Person Phone #: Home (_____)_____ Work (_____)_____

INSURANCE INFORMATION

Insurer/HMO Name: _____

Covered Person Insurance ID#: _____

Insurance Claim/Reference #: _____

Insurer/HMO Mailing Address: _____

City: _____ State: _____ Zip: _____

Insurer Telephone #: (_____)_____

EMPLOYER INFORMATION

Employer's Name: _____

Employer's Phone #: (_____)_____
Is the insurance you have through your employer a self-funded plan? _____. If you are not certain please check with your employer. Most self-funded plans are not eligible for external review. However, some self-funded plans may voluntarily provide external review, but may have different procedures. You should check with your employer.

HEALTH CARE PROVIDER INFORMATION

Treating Physician/Health Care Provider: _____

Address: _____

City: _____State: _____ Zip: _____

Contact Person: _____ Phone #: (_____)_____

Medical Record #: _____

REASON FOR HEALTH CARRIER DENIAL (Please check one)*
☐ The health care service or treatment is not medically necessary.
☐ The health care service or treatment is experimental or investigational.
*You can describe in your own words the health care service or treatment in dispute using the attached pages below.

EXPEDITED REVIEW

If you need a fast decision, you may request that your external appeal be handled on an expedited basis. To complete this request, your treating health care provider must fill out the attached form stating that a delay would seriously jeopardize the life or health of the patient or would jeopardize the patient's ability to regain maximum function. Is this a request for an expedited appeal? ☐ Yes☐ No

SIGNATURE AND RELEASE OF MEDICAL RECORDS

To appeal your health carrier's denial, you must sign and date this external review request form and consent to the release of medical records.

I, _____, hereby request an external appeal. I attest that the information provided in this application is true and accurate to the best of my knowledge. I authorize by insurance company and my health care providers to release all relevant medical or treatment records to the independent review organization and the Oklahoma Insurance Department. I understand that the independent review organization and the Oklahoma Insurance Department will use this information to make a determination on my external appeal and that the information will be kept confidential and not be released to anyone else. This release is valid for one year.

_____ _____
Signature of Covered Person (or legal representative)* Date
*(Parent, Guardian, Conservator or Other – Please Specify)

APPOINTMENT OF AUTHORIZED REPRESENTATIVE
(Fill out this section only if someone else will be representing you in this appeal.)

You can represent yourself, or you may ask another person, including your treating health care provider, to act as your authorized representative. You may revoke this authorization at any time.

I hereby authorize _____ to pursue my appeal on my behalf.

_____ _____
Signature of Covered Person (or legal representative)* Date
*(Parent, Guardian, Conservator or Other—Please Specify)

Address of Authorized Representative: _____
___

City: _____ State:_____ Zip: _____

Phone #: Daytime (_____)_____ Evening (_____)_____

HEALTH CARE SERVICE OR TREATMENT DECISION IN DISPUTE

DESCRIBE IN YOUR OWN WORDS THE DISAGREEMENT WITH YOUR HEALTH CARRIER. INDICATE CLEARLY THE SERVICE(S) BEING DENIED AND THE SPECIFIC DATE(S) BEING DENIED. EXPLAIN WHY YOU DISAGREE. ATTACH ADDITIONAL PAGES IF NECESSARY AND INCLUDE PERTINENT MEDICAL RECORDS, IF AVAILABLE. YOU MUST ALSO ATTACH ANY INFORMATION YOU RECEIVED FROM YOUR HEALTH CARRIER CONCERNING THE DENIAL, AND ANY ADDITIONAL INFORMATION FROM YOUR PHYSICIAN/HEALTH CARE PROVIDER THAT YOU WANT THE INDEPENDENT REVIEW ORGANIZATION REVIEWER TO CONSIDER.

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_____

_____

_____

WHAT TO SEND AND WHERE TO SEND IT

PLEASE CHECK BELOW (NOTE: YOUR REQUEST WILL NOT BE ACCEPTED FOR FULL REVIEW UNLESS ALL FOUR (4) ITEMS BELOW ARE INCLUDED*)

1. ☐ **YES**, I have included this completed application form signed and dated.

2. ☐ **YES**, I have included a photocopy of my insurance identification card or other evidence showing that I am insured by the health insurance company named in this application;

3. ☐ **YES****, I have enclosed the letter from my health carrier or utilization review company that states:
   (a) Their decision is final and that I have exhausted all internal review procedures; or
   (b) They have waived the requirement to exhaust all of the health carrier's internal review procedures.

**You may make a request for external review without exhausting all internal review procedures under certain circumstances. You should contact the Oklahoma Insurance Department for more information.

4. ☐ **YES**, I have included a copy of my certificate of coverage or my insurance policy benefit booklet, which lists the benefits under my health benefit plan.

*Call the Oklahoma Insurance Department at 800-522-0071 or 405-521-2828 if you need help in completing this application or if you do not have one or more of the above items and would like information on alternative ways to complete your request for external review.

If you are requesting a standard external review, send all paperwork to:

Oklahoma Insurance Department
External Review
Five Corporate Plaza
3625 NW 56th Street, Suite 100
Oklahoma City, OK, 73112-4511

If you are requesting an expedited external review, call the Insurance Department at 800-522-0071 or 405-521-2828 before sending your paperwork, and you will receive instructions on the quickest way to submit the application and supporting information.

CERTIFICATION OF TREATING HEALTH CARE PROVIDER FOR EXPEDITED CONSIDERATION OF A PATIENT'S EXTERNAL REVIEW APPEAL

NOTE TO THE TREATING HEALTH CARE PROVIDER

Patients can request an external review when a health carrier has denied a health care service or course of treatment on the basis of a utilization review determination that the requested health care service or course of treatment does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested. The Oklahoma Insurance Department oversees external appeals. The standard external review process can take up to 45 days from the date the patient's request for external review is received by our department. Expedited external review is available only if the patient's treating health care provider certifies that adherence to the time frame for the standard external review would seriously jeopardize the life or health of the covered person or would jeopardize the covered person's ability to regain maximum function. An expedited external review must be completed at most within 72 hours. This form is for the purpose of providing the certification necessary to trigger expedited review.

GENERAL INFORMATION

Name of Treating Health Care Provider: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Phone #: (_____)_____ Fax #: (_____)_____

Licensure and Area of Clinical Specialty: _____

Name of Patient: _____

Patient's Insurer Member ID#: _____

CERTIFICATION

I hereby certify that: I am a treating health care provider for _____
___
(hereafter referred to as 'the patient'); that adherence to the time frame for conducting a standard external review of the patient's appeal would, in my professional judgment, seriously jeopardize the life or health of the patient or would jeopardize the patient's ability to regain maximum function; and that, for this reason, the patient's appeal of the denial by the patient's health carrier of the requested health care service or course of treatment should be processed on an expedited basis.

_____
Treating Health Care Provider's Name (Please Print)

_____ _____
Signature Date

PHYSICIAN CERTIFICATION
EXPERIMENTAL/INVESTIGATIONAL DENIALS
(To Be Completed by Treating Physician)

I hereby certify that I am the treating physician for _____ (covered person's name) and that I have requested the authorization for a drug, device, procedure or therapy denied for coverage due to the insurance company's determination that the proposed therapy is experimental and/or investigational. I understand that in order for the covered person to obtain the right to an external review of this denial, as treating physician I must certify that the covered person's medical condition meets certain requirements:

In my medical opinion as the Insured's treating physician, I hereby certify to the following: (Please check all that apply) (NOTE: Requirements #1 - #3 below must all apply for the covered person to qualify for an external review).

1) ☐	The covered person has a terminal medical condition, or a life threatening condition, or a seriously debilitating condition.	
2) ☐	The covered person has a condition that qualifies under one or more of the following: [please indicate which description(s) apply]:	
	i. ☐	Standard health care services or treatments have not been effective in improving the covered person's condition;
	ii. ☐	Standard health care services or treatments are not medically appropriate for the covered person; or
	iii. ☐	There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the requested or recommended health care service or treatment.
3) ☐	The health care service or treatment I have recommended and which has been denied, in my medical opinion, is likely to be more beneficial to the covered person than any available standard health care services or treatments.	
4) ☐	The health care service or treatment I have recommended would significantly less effective if not promptly initiated. Explain: _____ _____	
5) ☐	It is my medical opinion based on scientifically valid studies using accepted protocols that the health care service or treatment requested by the covered person and which has been denied is likely to be more beneficial to the covered person than any available standard health care services or treatments. Explain: _____ _____	

Please provide a description of the recommended or requested health care service or treatment that is the subject of the denial. (Attach additional sheets as necessary.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Physician's Name (Please Print)

Physician's Signature

Date

APPENDIX RR. APPLICATION FOR REGISTRATION AS AN INDEPENDENT REVIEW ORGANIZATION [NEW]

Oklahoma Insurance Department
Five Corporate Plaza
3526 NW 56th Street, Suite 100
Oklahoma City, OK 73112
405-521-2828

☐ Initial Application
☐ Renewal

Application for Registration as an Independent Review Organization

Type of Entity: ☐ Corporation ☐ Partnership ☐ LLC ☐ Other _____

Contact Information for Application

Legal Name of Applicant	State of Domicile	Federal EIN	
Contact Person (Name and Title)	Phone ( )	Email	
Business Address (Do not use PO Box)	City	State	Zip
Mailing Address (if different from business address)	City	State	Zip

Contact Information for Initiating External Reviews (also to be made available to carriers and consumers)

Contact Person (Name and Title) or Department	Phone ( )	Email	
Mailing Address	City	State	Zip
Website	Toll-Free Telephone Number	Fax ( )	
Other Contact Information			

A

Applicant Attestation and Certification

Applicant certifies that it will notify the Oklahoma Insurance Department immediately if its accreditation is lost with the American Accreditation Healthcare Commission/URAC. Applicant acknowledges that the Oklahoma Insurance Department may terminate this license if the applicant loses accreditation or no longer satisfies the minimum requirements for licensure.

Applicant acknowledges that payment of any fees associated with any external reviews conducted pursuant to 36 O.S. § 6475.1 et seq. are the sole responsibility of the health carrier whose medical decision is being reviewed. Applicant understands that it has no recourse against the Oklahoma Insurance Department or the state of Oklahoma to the extent that any health carrier fails to pay any medical reviewer fees. Applicant authorizes the Oklahoma Insurance Department to verify information with any federal, state, or local government agency, insurance company or accrediting organization.

Applicant acknowledges and represents that it understands and will comply with Oklahoma's insurance laws and the rules of the Oklahoma Insurance Department. Applicant hereby represents that it will comply with all requirements imposed under 36 O.S. § 6475.1 et seq. and assures that no conflict of interest or improper controlling interest as outlined in the statute exists. Applicant further agrees to maintain and provide to the Oklahoma Insurance Department the information set out in 36 O.S. § 6475.15.

I certify that, under penalty of perjury, I am the person named herein and know the contents thereof, and that all of the information submitted in this application and its attachments is true and complete. I attest that I have the authority and capacity to execute this certification on behalf of the applicant. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license denial or revocation and may subject me to civil or criminal penalties.

Signature of person who completed application	Signature of Officer, Director, or Board Member
Printed Name	Printed Name
Title	Title
Date	Date

Please provide the following documents:

1. A copy of the most recent certificate from American Accreditation HealthCare Commission/URAC for Independent Review Organizations.
2. A schedule of fees.
3. A copy of the current Certificate of Authority provided by the Oklahoma Secretary of State.

Please submit this application and all required attachments to:

Oklahoma Insurance Department
External Review Program
Five Corporate Plaza
3625 NW 56th Street, Suite 100
Oklahoma City, OK 73112

APPENDIX SS. INDEPENDENT REVIEW ORGANIZATION EXTERNAL REVIEW ANNUAL REPORT FORM [NEW]

Oklahoma Insurance Department

Independent Review Organization External Review Annual Report Form

External Review Annual Summary for 20___ ___		Due by January 31 for the previous calendar year.	
Each independent review organization (IRO) shall submit an annual report with information for each health carrier in the aggregate on external reviews performed in Oklahoma only.			
1. IRO name:		Filing date:	
2. IRO license/certification no:			
3. IRO address:			
City, State, Zip:			
4. IRO Website:			
5. Name of person completing this form:			
Email:	Phone:	Fax:	
6. Person responsible for regulatory compliance and quality of external reviews:			
Name:	Title:		
7. Total number of requests for external review received from the Oklahoma Insurance Department during the reporting period:			
8. Number of standard external reviews:			
9. Average number of days IRO required to reach a final decision in standard reviews:			
10. Number of expedited reviews completed to a final decision:			
11. Average number of days IRO required to reach a final decision in expedited reviews:			
12. Number of medical necessity reviews decided in favor of the health carrier:			
Briefly list procedures denied:			

13. Number of medical necessity reviews decided in favor of the covered person:			
Briefly list procedures approved:			
14. Number of experimental/investigational reviews decided in favor of the health carrier:			
Briefly list procedures denied:			
15. Number of experimental/investigational reviews decided in favor of the covered person:			
Briefly list procedures approved:			
16. Number of reviews terminated as the result of a reconsideration by the health carrier:			
17. Number of reviews terminated by the covered person:			
18. Number of reviews declined due to possible conflict with	health carrier:		
	covered person:		
	health care provider:		
Describe possible conflicts of interest:			
19. Number of reviews declined due to other reasons not reflected in #18 above:			
Briefly list these reasons:			

Please submit to:
Oklahoma Insurance Department
Five Corporate Plaza
3625 NW 56th Street, Suite 100
Oklahoma City, OK 73112-4511

APPENDIX TT. HEALTH CARRIER EXTERNAL REVIEW ANNUAL REPORT FORM [NEW]

Oklahoma Insurance Department

Health Carrier External Review Annual Report Form

External Review Annual Summary for 20___ ___		Due by January 31 for the previous calendar year.	
Each health carrier shall submit an annual report with information in the aggregate by State and by type of health benefit plan.			
1. Health carrier name:		Filing date:	
2. Health carrier address:			
City, State, Zip:			
3. Health carrier Website:			
4. Name of person completing this form:			
Email:	Phone:	Fax:	
5. Total number of external review requests received from the Oklahoma Insurance Department during the reporting period:			
6. From the total number of external review requests provided in Question 5, the number of requests determined eligible for a full external review:			

Please submit to:
Oklahoma Insurance Department
Five Corporate Plaza
3625 NW 56th Street, Suite 100
Oklahoma City, OK 73112-4511

APPENDIX UU. POLICY HOLDER'S AUTHORIZATION TO RELEASE INSURANCE POLICY INFORMATION TO AGENT OF RECORD [NEW]

POLICY HOLDER'S AUTHORIZATION TO RELEASE INSURANCE POLICY INFORMATION TO AGENT OF RECORD

Pursuant to 36 O.S. § 1435.41(A), an insurer shall provide to any insurance producer authorized to sell life insurance products, whose appointment has been terminated for any reason other than the reasons set forth in 36 O.S. § 1435.13 and who is still the agent of record or servicing agent and has not been replaced by another servicing agent upon termination, information relating to the policy of a person who purchased a product from such producer if the policy holder and the insured have signed the following form authorizing the release of the information.

Policy Holder's Full Name:

_____

Policy Holder's Address:

_____

_____

Last four digits of Policy Holder's SSN:

_____

Type of Insurance Policy:

_____

Policy Number:

_____

Name of Insurance Company:

_____

Insurance Company Address:

_____

_____

AUTHORIZATION

I, (Policy Holder's name) _____, hereby authorize and request (Insurance Company Name) _____to release information related to the aforementioned policy to the Producer of record in accordance with 36 O.S. §, 1435.41 (A):

Producer's Name: _____

Oklahoma License Number: _____

Address:

_____

_____

Disclosure shall be limited to the following specific types of information:

_____

_____

Use of this information shall be limited to the following purpose(s):

_____

_____

I understand that any cancellation or modifications of this authorization must be in writing, and that I have a right to receive a copy of this authorization. A photocopy of this authorization shall be as effective and valid as the original.
This authorization shall remain valid until: _____
I furthermore release all parties stated here within from any legal liability resulting from the release of this information, with the understanding that all parties involved will exercise appropriate safeguards while using this information.

Policy Holder Signature:
_____Date:_____
Insured's Signature (if Insured is not also the Policy Holder):
_____Date:_____

APPENDIX VV. UNIFORM HEALTH QUESTIONNAIRE [NEW]

UNIVERSAL HEALTH QUESTIONNAIRE **OKLAHOMA**

Individual Health Statement	**Employer Plan Name** **EMPLOYEE NAME:**	
Enrollment, please circle one. If waiving coverage, please see next box. Employee Only Employee/Spouse Employee/Child(ren) Employee/Family	Waiving Medical (please check box) ☐	City, State, County and Zip Code of Residential Address:

1. **Only the Individual(s) Requesting Coverage at this Time Should be Listed.** ☐ Check here if additional dependent children are listed on a separate attachment. (Be sure to include their sex, birthdate, height and weight.)

	Sex Security Number Tobacco Use?	Social	Birthdate	Height (ft., in.)	Weight (lbs.)
Employee	☐ M	☐ F			
Spouse	☐ M	☐ F			
Dependent Child	☐ M	☐ F			
Dependent Child	☐ M	☐ F			
Dependent Child	☐ M	☐ F			

2. **Answer all questions:** Within the last **five** years has anyone applying for coverage consulted, received treatment, by a doctor, psychiatrist, psychologist, or other practioner or been diagnosed with any of the following conditions or disorders? (Check all that apply.)

a.	☐	AIDS or HIV	k.	☐	Paralysis/Paresis	u.	☐	Birth Defects/Congenital Abnormalities
b.	☐	Diabetes	l.	☐	Tumor/Cyst/Growth	v.	☐	Arthritis/Bone/Joint/Muscle/Prostetic Device
c.	☐	Infertility	m.	☐	Systemic or Discoid Lupus	w.	☐	Mental/Nervous/Emotional/Eating Disorder
d.	☐	Endocrine/Metabolic	n.	☐	Lung or Respiratory	x.	☐	Stroke/Brain/Neurological
e.	☐	Pancreas	o.	☐	Alcohol or Drug Use	y.	☐	Transplant ☐Recommended☐Pending ☐ Complete
f.	☐	Live/Hepatitis	p.	☐	Kidney/Bladder/Urinary	z.	☐	Advised to have surgery or course of treatment not yet determined
h.	☐	Immune System	q.	☐	Circulatory/Vascular	aa.	☐	Cancer: Type:_____Stage:_____ ☐Surgery ☐Chemo ☐ Radiation
h.	☐	Blood Disorder	r.	☐	Digestive/Stomach/Intestinal	bb.	☐	Using: ☐Crutches ☐Walker ☐Wheelchair
i.	☐	Epilepsy/Seizure	s.	☐	Central Nervous System	cc..	☐	Other_____
j.	☐	Heart	t.	☐	Pituitary/Adrenal/Growth Disorder			

☐ Yes ☐ No

3. Is any female currently pregnant? If so, provide due date _____Check applicable boxes: ☐ C Section Planned ☐ Multiple Births Expected (#_____) ☐ Complications: ☐ Past or ☐ Present	☐ Yes ☐ No
4. Has anyone applying for coverage incurred medical expenses in excess of $5,000 in the past 24 months?	☐ Yes ☐ No
5. Has anyone applying for coverage been prescribed medications in the past 12 months?	☐ Yes ☐ No
6. Does anyone applying for coverage have a known condition that requires on-going treatment?	☐ Yes ☐ No

Question Number	Name of Individual	Condition/Diagnosis	Date of Onset	Date Treatment Ended	Names of Prescription Medication	Dosage	Still Taking Medication
							☐ Yes ☐ No

							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No
							☐ Yes ☐ No

Certification and Authorization: I acknowledge that I have read all sections of this Uniform Health Questionnaire (Questionnaire)and I certify on behalf of my eligible family dependents and myself that the answers contained in this Application are complete and accurate to the best of my knowledge. I understand and agree that neither my employer nor any insurance producers have any authority to waive my complete answer to any question, agree to insurability, alter any contract, or waive any carrier's other rights or requirements.

I understand and agree that any information obtained in connection with this Questionnaire will be used by small employer carrier(s) to determine eligibility for coverage, underwriting and for any other purposes related to providing coverage. On behalf of my eligible family dependents and myself, I authorize any provider of health services or supplies, insurance company, health care clearinghouse, pharmacy benefit manager, and any other person with knowledge or records to release information to any small employer carrier, its agents and legal representatives, about any and all health-related services and supplies provided or to be provided to me or my eligible family dependents. I understand that I may request a copy of this Questionnaire. I agree that a photographic copy of this Application shall be as valid as the original. A legible facsimile signature shall have the same force and effectiveness as the original. This document will become a part of the contract when coverage is approved and issued.

LAST 4 DIGITS OF SSN:	**DATE:**

You are NOT required to share this information with your employer. You may, at your discretion, return this completed questionnaire in a sealed envelope. Please write your name on the outside of the envelope for easy identification.

[OAR Docket #12-748; filed 5-25-12]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #12-749]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-30. Special Commercial Risks [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 907 and 986.
DATES:
Comment period:
February 1, 2012 through March 2, 2012
Public hearing:
March 7, 2012
Adoption:
March 22, 2012
Submitted to Governor:
March 22, 2012
Submitted to House of Representatives:
March 22, 2012
Submitted to Senate:
March 22, 2012
Gubernatorial approval:
May 1, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2012.
Final adoption:
May 18, 2012
Effective:
July 14, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
365:15-7-3 is amended to update the address of the Oklahoma Insurance Commissioner. 365:15-7-30 requires a renumbering of paragraphs to be consistent with the amendment to 36 O.S. § 997, effective November 1, 2010.
CONTACT PERSON:
Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2012:

SUBCHAPTER 7. PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

365:15-7-3. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss cost and manual rule filings to the Insurance Commissioner as required by 36 O.S. § 981 et seq.

(b) **Procedures.** Rate, loss cost and manual rules and revisions thereto by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, 36 O.S. § 981 et seq., requires that each insurer shall make its rate, loss cost and manual rule filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code. Fees shall not be paid in cash.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by advisory organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, ~~P.O. Box 53408, Oklahoma City, OK 73152-3408.~~3625 NW 56th Street, Suite 100, Oklahoma City, Oklahoma 73112.

(4) **Number of copies.** All filings except those exempted shall be submitted through the System for Electronic Rate and Form Filing (SERFF) pursuant to the SERFF General Instructions. All paper filings including the cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be typewritten or printed and submitted with one (1) legible copy of all material. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting one (1) typewritten or printed legible copy of all material.

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken through the System for Electronic Rate and Form Filing (SERFF). Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof. The notice shall include the reason for the withdrawal.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefore, illustrative examples, including "John Doe" specimen examples, and a comparison of currently approved and proposed materials (side by side comparison or marked copy).

(E) A concise statement to identify the manual pages (rate and/or rule) to be replaced by the filing including the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced .

(F) Completed transmittal forms and exhibits.

(11) **Advisory organization deviations.** Every member of, or subscriber to, a licensed advisory organization may adhere to any filings made on its behalf by its advisory organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the advisory organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

365:15-7-30. Special Commercial Risks

To qualify for the exemption under 36 O.S. § 997(A)~~(3)~~(2), the commercial lines insurance risks shall be separate and distinct policies, with a minimum annual premium of more than Ten Thousand Dollars ($10,000.00) per policy.

[OAR Docket #12-749; filed 5-25-12]

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

[OAR Docket #12-750]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors
365:25-3-1. Insurance producers continuing education [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1435.19, 1435.29, 6217
DATES:
Comment period:
February, 1, 2012 through March 2, 2012
Public hearing:
March 7, 2012
Adoption:
March 22, 2012
Submitted to Governor:
March 22, 2012
Submitted to House of Representatives:
March 22, 2012
Submitted to Senate:
March 22, 2012
Gubernatorial approval:
May 1, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2012
Final adoption:
May 18, 2012
Effective:
July 14, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to sections 365:25-3-1(d)(1) and 365:25-3-14(d)(1) make the rules consistent with changes to 36 O.S. §§ 1435.29(A)(1) and 6217(B) effective November 1, 2011, which no longer require continuing education be in the subjects of the lines for which the insurance producer or adjuster is licensed. The amendments to 365:25-3-1(d)(6) and 365:25-3-14(d)(5) change the word "met" to "reported" due to the continuing education reporting requirements of the new producer and adjuster data base implemented in June 2011.
CONTACT PERSON:
Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2012:

SUBCHAPTER 3. PRODUCERS, BROKERS, LIMITED LINES PRODUCERS AND VEHICLE PROTECTION PRODUCT WARRANTORS

365:25-3-1. Insurance producers continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education, which an insurance producer must meet and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

(1) **"CE"** means continuing education.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least fifty (50) minutes classroom instruction unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance producer.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance producers.

(9) **"Provider Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by a producer or producers.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) limited lines producers.

(2) a non-resident producer who resides and is licensed in a state or district having continuing education requirements and the producer meets all the requirements of that state or district to practice therein. The non-resident producer shall be responsible for completing any reporting requirements necessary to verify completion.

(3) a non-resident producer of a state that does not require continuing education hours may fulfill the requirements of any other state's continuing education

requirements and shall be deemed to have complied with this rule upon proof of completion of said hours.

(d) **Continuing education requirements.**

(1) **CE during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in 36 O.S. § 1435.29 during each twenty-four month period. The twenty-four month period begins the first day after the license is granted. ~~The credit hours completed must be in those lines in which the producer is licensed.~~ Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, each producer shall submit upon each licensing renewal certificate(s) of course completion as approved by the Insurance Department, which verify courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Six (6) credit hours in excess of the minimum twenty-four month period requirement shall carry forward to the next twenty-four month period. Excess hours may be applied to bring a lapsed license into compliance.

(4) **Legislative updates.**

(A) At least two (2) of the continuing education credit hours of instruction completed by licensees each twenty-four month period shall be taken in the following topics:

(i) state legislative updates

(ii) federal legislative updates.

(5) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

(6) **Prerequisite for renewal or reinstatement.** As a prerequisite for licensure renewal or upon reinstatement following a lapse of license, a producer must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section which establish that the education requirements have been ~~met~~reported for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required, fee.** Each provider shall apply for approval from the Commissioner. Each provider, with the exception of public funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations, and Oklahoma state agencies shall submit after its approval a provider fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions, federal agencies , nonprofit organizations, not-for-profit organizations and Oklahoma agencies shall provide:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known, unless it is an individual self- study course;

(D) The number of CE hours requested for each course;

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes;

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(G) If a prior approved course has materially changed, a summarization of those changes;

(2) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late or incomplete on the approval anniversary date.

(3) **Reinstatement period.** Providers whose approval has expired may be reinstated pursuant to paragraph 1 of this subsection. The reinstatement period shall be for a period of one (1) year following the expiration of the renewal date. The approval of the provider and any currently active courses shall remain active for the reinstatement period. If the provider and all courses fail to remain active following the reinstatement period, the provider and courses shall not be reinstated and the provider and courses shall be required to be approved pursuant to the provisions of this subsection.

(4) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records; fee.**

(1) **Timeline for approval.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply for and submit the appropriate course review fee to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Written approval required.** All courses shall require written approval by the Commissioner.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course approval. This withdrawal will not affect any CE hours attained under the course previous to the withdrawal. If a provider provides a CE course after that course has been denied by the Commissioner, the provider may be subject to an administrative action and penalty.

(4) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(5) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(6) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, and subjects not relating to the insurance license. However, agency management courses designed to assist producers in becoming more efficient, profitable, and assuring their perpetuation, will be deemed to be in the best interest of the insuring public and thereby subject to approval. Each such agency management course must include the description, the effects the course is designed to accomplish toward the purposes of efficiency, profitability, and/or perpetuation and each course will be reviewed for approval on its own merits.

(7) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance producer a "Certificate of Course Completion" Form.

(8) **List of producers completing course to Commissioner; producer license numbers.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance producers who completed the course on the Course Completion Form. This list shall contain the course number, date of completion and license numbers of all insurance producers completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(9) **Course records maintained four years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(10) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date and instructor's name.

(11) **Course evaluation.** The continuing education provider shall provide written notification to each producer of the opportunity to offer comments on any continuing education class via the Insurance Department website.

(12) A non-refundable course review fee of thirty dollars ($30.00) per course shall be submitted by all continuing education providers at the time the course submission is first submitted for review and upon submission for renewal at expiration with the exception of publicly funded educational institutions, federal agencies, Oklahoma state agencies, non-profit organizations, and not-for-profit organizations.

(g) **Approved Professional Designation Programs**

(1) **Definitions.**

(A) **Participation.** As used in 36 O.S. § 1435.29(B)(3), participates means successfully completing any part of a course curriculum totaling twenty (20) classroom or equivalent classroom hours of an approved professional designation program.

(B) **Approved Professional Designation Program.** As used in 36 O.S.§ 1435.29(B)(3), an approved professional designation program means an educational insurance program approved by the Commissioner with a sponsoring organization that administers curriculum requirements and testing standards for candidates.

(2) **Requirements.** A professional designation program shall satisfy the following criteria to receive initial and ongoing approval for the program:

(A) The program shall have a sponsoring organization;

(B) The program's sponsoring organization shall maintain and govern a code of conduct;

(C) The program shall be relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma;

(D) Each course of the professional designation course curriculum shall be a minimum of twenty (20) hours of classroom instruction or equivalent classroom instruction; and

(E) The program shall include an examination requirement that students shall pass before earning the designation.

(3) **Submissions.** The sponsoring organization shall submit the following to the Commissioner for its professional designation program to be considered for initial and ongoing approval for the program:

(A) The sponsoring organization's code of conduct;

(B) The sponsoring organization's membership requirements;

(C) The professional designation program's course requirements; and

(D) The professional designation program's examination requirements.

(4) **Submission exemptions.** Professional designation programs recognized by the National Association of Insurance Commissioners (NAIC) for waiver/exemption of pre-licensing education training shall receive initial and continuing approval without submission by the sponsoring organization.

(h) **Presumptive Continuing Education Credit Approval.**

(1) **Requirements.** A professional association may receive presumptive approval of the association's continuing education courses by satisfying the following requirements:

(A) The association shall have a mission statement that includes a commitment to enhance the professional, educational, or ethical skills of its members;

(B) The association shall maintain and govern a code of member conduct;

(C) The association shall offer educational programs relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma; and

(D) The association shall perpetuate its continuity through the election of officers.

(2) **Submissions.** Each professional association shall submit the following to be considered for initial and ongoing presumptive course approval:

(A) The association's mission statement;

(B) The association's code of member conduct;

(C) The chapter officers, the responsibilities for each officer, and the term of office for each officer;

(D) The mailing address and primary contact for the association; and

(E) The list of continuing education courses approved in Oklahoma and offered by the professional association in the past twenty-four (24) months.

(3) **Notification of approval or disapproval.**

(A) The Commissioner shall notify the association within ninety (90) days from the receipt of submission whether presumptive approval for continuing education courses was granted. The notification shall indicate the reasons for disapproval.

(B) Submissions to the Commissioner by an association seeking presumptive approval of continuing education courses shall include the course summary, instructor name, course date and location and shall be submitted to the Commissioner at least fifteen (15) business days prior to the presentation of the course.

(C) If the Commissioner receives a report or reports that the content of a continuing education course may violate 365:25-3-1(f)(6) of this section, the Commissioner may review the content and determine if the course should be disapproved for noncompliance. The Commissioner shall notify the association if the course has been disapproved due to non-compliance, and the association shall immediately cease offering the course upon receipt of the notification. The association may then make corrections to a disapproved course to bring the course into compliance with 365:25-3-1(f)(6) of this section and submit the course for approval by the Commissioner in the manner of an original submission for presumptive continuing education course approval.

(D) Should an association receive notification of three (3) disapproved courses within a twenty-four (24) month period, the association's presumptive approval for continuing education courses shall be rescinded for twenty-four (24) months after which time the association may re-apply for presumptive approval.

(4) **Assignment of course number.** The Commissioner shall assign a course number once the presumptive approval for continuing education courses has been granted and shall notify the association of the assigned course number. All future correspondence relating to that course shall reference the assigned course number.

(5) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted.

(6) **Review.** Course approval shall be reviewed every three (3) years. The association shall re-submit the items required in subparagraph (3)(B) of this section during the fourth quarter of the last approval year.

(7) **Agency Management Courses.** Agency management courses shall not be considered for presumptive continuing education approval.

(i) **Self study and Distance Learning Courses.** The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed, updated as appropriate, and published annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the producer and revocation of the course approval and or provider status for the provider.

(j) **Repeating courses.** An insurance producer may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the producer may not during the twenty-four month period earn more than the maximum credits designated for the course. A producer may repeat a course after two years have elapsed and receive the maximum credits designated for the course.

(k) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twenty-four-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(l) **Course approval.** Prior to the Commissioner's approval or disapproval of a course in 365:25-3-1(f), a continuing education advisory committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-1(e) regarding the course or additional information regarding the course, if necessary, the number of

CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of not more than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes shall reset the validity period. At the expiration of the validity period, providers shall submit the course for approval by the Commissioner if the provider wants to continue to offer the course for continuing education credit.

(m) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

365:25-3-14. Insurance adjusters continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance adjuster must meet, and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

(1) **"CE"** means continuing education.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least fifty (50) minutes of classroom instruction, unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance adjuster.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance adjusters.

(9) **"Provider Course Completion Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an adjuster or adjusters.

(c) **Exceptions.** Continuing education requirements shall not apply to non-resident adjusters licensed in a state that has a continuing education requirement for adjusters.

(d) **Continuing education requirements.**

(1) **CE during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in Section 6217(B) of Title 36 of the laws of this state during each twenty-four month period. The twenty-four month period begins the first day ~~of the month following the month in which the license is granted~~ after the license is granted.~~The credit hours completed must be in those lines in which the adjuster is licensed.~~ Six (6) credit hours in excess of the minimum twenty-four month period requirement shall carry forward to the next twenty-four month period. Excess hours may be applied to bring a lapsed license into compliance.

(A) All adjusters who adjudicate workers compensation claims shall complete six (6) hours of continuing education relating to the Workers' Compensation Act as part of the twenty-four (24) clock hours of continuing insurance education as set forth in Section 6217(D) of Title 36 of the Oklahoma Statutes.

(B) Insurers who utilize either a resident or non-resident adjuster for the adjudication of workers compensation claims occurring in this state shall verify that the adjuster has completed the workers compensation biennial continuing education requirement set forth in subparagraph (A) of this paragraph. An insurer may satisfy its responsibility under this subsection by:

(i) Obtaining certificates of completion of the continuing education course,

(ii) Obtaining reports provided by Commissioner-sponsored database systems or vendors, or

(iii) Obtaining reports from a reasonably reliable commercial database vendor that has a reporting arrangement with approved insurance education providers.

(C) Insurers subject to the provisions of this subsection shall maintain records with respect to the continuing education requirement of its adjusters as set forth in subparagraph (A) of this paragraph. These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the Commissioner upon request.

(2) **Certificates of course completion required for license renewal.** If course completion is not reflected on the license renewal form issued by the Insurance Department, each adjuster shall attach, if requested by the Commissioner, an approved course completion certificate to the license renewal form returned to the Department for verification of course completion. The Commissioner shall maintain a cumulative total of continuing education credit hours to insure compliance within the twenty-four (24) month period.

(3) **Legislative Updates.** At least two (2) of the continuing education credit hours of instruction completed by

licensees each twenty-four month period shall be taken in the following topics:

(A) State legislative updates, or

(B) Federal legislative updates.

(4) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session by including his/her name and license number on roster.

(5) **Prerequisite for renewal or reinstatement.** As a prerequisite for license renewal or prior to reinstatement following a lapse of license, an adjuster must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section that establish the educational requirements have been ~~met~~ reported ~~if not currently recorded by the Oklahoma Insurance Department.~~ for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required.** Each provider shall apply for approval by the Commissioner. All providers, including publicly funded educational institutions, federal agencies, nonprofit organizations, not-for-profit organizations and Oklahoma state agencies, shall provide:

(A) Name and address of the provider.

(B) Contact person and his or her address and telephone number(s).

(C) The location of the courses or programs, if known, unless it is an individual elf-study course.

(D) The number of CE hours requested for each course.

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials.

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(G) If a prior approved course has materially changed, a summarization of those changes.

(2) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) **Course approval timeline.** A provider shall apply to the Commissioner for course approval by submitting forms and materials to the Commissioner the first day of the month one full month prior to the date of the first course offering. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CE hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Repeated approved course.** At least fourteen (14) days prior to the repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date, location and instructor's name.

(3) **Written approval required.** All courses shall require written approval by the Commissioner.

(4) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course. This withdrawal will not affect any CE hours attained under the course previous to the withdrawal.

(5) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(6) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(7) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, time management, phone etiquette, basic pre-licensing principles of adjusting, and subjects not relating to the adjuster's license.

(8) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance adjuster a "Certificate of Course Completion" Form.

(9) **List of adjusters completing course to Commissioner.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance adjusters who completed the course on the Course Completion Form. This list shall contain the course number, date of completion and license numbers of all insurance adjusters completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(10) **Course records maintained four (4) years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(11) **Course review fee.** A non-refundable course review fee of thirty dollars ($30.00) per course shall be submitted by all continuing education providers at the time the course submission is first submitted for review and upon submission for renewal at expiration with the exception of publicly funded educational institutions, federal agencies, Oklahoma state agencies, non-profit organizations, and not-for-profit organizations.

(12) **Reinstatement period.** Providers whose approval has expired may be reinstated pursuant to paragraph 1 of

this subsection. The reinstatement period shall be for a period of one (1) year following the expiration of the renewal date. The approval of the provider and any currently active courses shall remain active for the reinstatement period. If the provider and all courses fail to remain active following the reinstatement period, the provider and courses shall not be reinstated and the provider and courses shall be required to be approved pursuant to the provisions of this subsection.

(g) **Approved professional designation programs**

(1) **Definitions.**

(A) **Participation.** As used in 36 O.S. § 1435.29(B)(3), participates means successfully completing any part of a course curriculum totaling twenty (20) classroom or equivalent classroom hours of an approved professional designation program.

(B) **Approved professional designation program.** As used in 36 O.S. § 1435.29(B)(3), an approved professional designation program means an educational insurance program approved by the Commissioner with a sponsoring organization that administers curriculum requirements and testing standards for candidates.

(2) **Requirements.** A professional designation program shall satisfy the following criteria to receive initial and ongoing approval for the program:

(A) The program shall have a sponsoring organization;

(B) The program's sponsoring organization shall maintain and govern a code of conduct;

(C) The program shall be relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma;

(D) Each course of the professional designation course curriculum shall be a minimum of twenty (20) hours of classroom instruction or equivalent classroom instruction; and

(E) The program shall include an examination requirement that students shall pass before earning the designation.

(3) **Submissions.** The sponsoring organization shall submit the following to the Commissioner for its professional designation program to be considered for initial and ongoing approval for the program:

(A) The sponsoring organization's code of conduct;

(B) The sponsoring organization's membership requirements;

(C) The professional designation program's course requirements; and

(D) The professional designation program's examination requirements.

(4) **Submission exemptions.** Professional designation programs recognized by the National Association of Insurance Commissioners (NAIC) for waiver/exemption of pre-licensing education training shall receive initial and continuing approval without submission by the sponsoring organization.

(h) **Presumptive continuing education credit approval.**

(1) **Requirements.** A professional association may receive presumptive approval of the association's continuing education courses by satisfying the following requirements:

(A) The association shall have a mission statement that includes a commitment to enhance the professional, educational, or ethical skills of its members;

(B) The association shall maintain and govern a code of member conduct;

(C) The association shall offer educational programs relevant to the sale, solicitation, or negotiation of insurance products in the State of Oklahoma; and

(D) The association shall perpetuate its continuity through the election of officers.

(2) **Submissions.** Each professional association shall submit the following to be considered for initial and ongoing presumptive course approval:

(A) The association's mission statement;

(B) The association's code of member conduct;

(C) The chapter officers, the responsibilities for each officer, and the term of office for each officer;

(D) The mailing address and primary contact for the association; and

(E) The list of continuing education courses approved in Oklahoma and offered by the professional association in the past twenty-four (24) months.

(3) **Notification of approval or disapproval.**

(A) The Commissioner shall notify the association within ninety (90) days from the receipt of submission whether presumptive approval for continuing education courses was granted. The notification shall indicate the reasons for disapproval.

(B) Submissions to the Commissioner by an association seeking presumptive approval of continuing education courses shall include the course summary, instructor name, course date and location and shall be submitted to the Commissioner at least fifteen (15) business days prior to the presentation of the course.

(C) If the Commissioner receives a report or reports that the content of a continuing education course may violate paragraph 365:25-3-1(f)(7) of this section, the Commissioner may review the content and determine if the course should be disapproved for noncompliance. The Commissioner shall notify the association if the course has been disapproved due to non-compliance, and the association shall immediately cease offering the course upon receipt of the notification. The association may then make corrections to a disapproved course to bring the course into compliance with paragraph 365:25-3-1(f)(7) of this section and submit the course for approval by the Commissioner in the manner of an original submission for presumptive continuing education course approval.

(D) Should an association receive notification of three (3) disapproved courses within a twenty-four (24) month period, the association's presumptive approval for continuing education courses shall be rescinded for twenty-four (24) months after which

time the association may re-apply for presumptive approval.

(4) **Assignment of course number.** The Commissioner shall assign a course number once the presumptive approval for continuing education courses has been granted and shall notify the association of the assigned course number. All future correspondence relating to that course shall reference the assigned course number.

(5) **Instructor approval.** Instructors shall be approved by the Commissioner at least fourteen (14) calendar days prior to a presentation of a course. The Commissioner may disapprove any course if instructor approval has not been granted.

(6) **Review.** Course approval shall be reviewed every three (3) years. The association shall re-submit the items required in subparagraph 365:25-3-14(H)(3)(B) of this section during the fourth quarter of the last approval year.

(7) **Agency management courses.** Agency management courses shall not be considered for presumptive continuing education approval.

(i) **Self study and distance learning courses.** The Insurance Commissioner shall determine appropriate guidelines and standards for self-study and distance learning CEC offerings. The guidelines and standards shall include authentication of the registered licensee, technology requirements for course delivery and testing protocols. Guidelines and standards shall be reviewed and updated as appropriate and published on the Commissioner's website annually. Failure to follow the guidelines and standards established by the Commissioner may result in denial of continuing education credit for the adjuster and revocation of the course approval and or provider status for the Provider.

(j) **Repeating courses.** An insurance adjuster may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the adjuster may not during the twenty-four month period earn more than the maximum credits designated for the course. An adjuster may repeat a course after two (2) years have elapsed and receive the maximum credits designated for the course.

(k) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twelve-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(l) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of representatives from the Licensing Division, and representatives from the industry (not to exceed three (3) individuals) as designated by the Commissioner. Members of the Advisory Board established by 36 O.S. § 6221 may also serve on the Continuing Education Advisory Committee. The committee shall meet at least quarterly and additionally as required. Members of the committee shall serve without pay and shall not be reimbursed for any expenses associated therewith.

(2) Prior to the Commissioner's approval or disapproval of a course in subsection 365:25-3-14(e), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted pursuant to subsection 365:25-3-14(e) and additional information regarding the course, if necessary. Each course approval shall be valid for a period of no longer than two (2) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course materials may be resubmitted as requested for review at the time of expiration. All existing courses previously approved and current with the Commissioner shall be submitted in accordance with the expiration date as granted by the Commissioner unless the course has a material change, as previously detailed.

(m) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[OAR Docket #12-750; filed 5-25-12]

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

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Final adoption:
May 22, 2012
Effective:
July 14, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to 365:25-5-3(b) reflects that bail bondsman must complete eight (8) credit hours of continuing education annually to meet the biennial requirement. The amendment to 365:25-5-4 reflects the change from the annual Oklahoma Bondsman Association's submission for continuing education course approval period to a biennial period. The amendment to 365:25-5-34 eliminates the requirement that a professional bondsman making an additional or replaced deposit appear in person at the Office of the Insurance Commissioner and now allows a professional bondsman to mail an additional or replaced deposit via certified mail. It also states that the additional or replaced deposit is not added or included in the deposit total until received, processed and accepted by the Insurance Department staff. 365:25-5-35 amends terminology in the rule from "late renewal" to "reinstatement" to reflect that a reinstatement is not a late renewal but instead requires a new application based on the license application fee of $200.00 plus an additional $200.00 reinstatement fee. 365:25-5-43 amends language because the bail bondman's appointment form is now electronically sent to the appropriate county court clerk instead of being mailed.
CONTACT PERSON:
Julie Meaders, Assistant General Counsel, Oklahoma Insurance Department, 3625 NW 56th St., Suite 100, Oklahoma City, OK 73112, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2012:

SUBCHAPTER 5. BAIL BONDSMEN

PART 1. CONTINUING EDUCATION FOR BAIL BONDSMEN

365:25-5-3. Education Requirements

(a) Education verification prior to licensure. Prior to taking the bail bondsman licensing examination, the applicant shall successfully complete the hours of prelicensing education required by 59 O.S. § 1308.1(A) in subjects pertinent to the duties and responsibilities of a bail bondsman.

(b) ~~Annual continuing~~ Continuing education. All bail bondsmen shall complete ~~the~~eight (8) credit hours of continuing education required by 59 O.S. § 1308.1(A) annually ~~prior~~ to meet the biennial requirement.~~license renewal~~

(c) CE credit for instructor. An instructor who is a licensed bail bondsman shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

365:25-5-4. Application for course approval

(a) Oklahoma Bondsman Association courses. The Oklahoma Bondsman Association shall apply for course approval from the Commissioner. The Association shall ~~annually~~biennially submit a fee of Two ~~One~~ Hundred Dollars ($200.00)~~($100.00)~~ to the Insurance Commissioner.

(b) **Information regarding OBA courses.** The Oklahoma Bondsman Association shall submit the following information concerning educational courses:

(1) Name, address and qualifications of the instructor;

(2) Contact person, his or her address and telephone number;

(3) The location of the courses or programs, unless it is an individual study or correspondence course;

(4) The number of hours requested for each course;

(5) Topic outlines which list the summarized topics covered in each course and upon request, a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes.

(c) **Instructor qualifications.** An instructor shall have one of the following qualifications:

(1) Three (3) years of recent experience in the subject area being taught; or

(2) A degree related to the subject area being taught; or

(3) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(d) **Losing course approval.** The Commissioner may withhold or withdraw approval of any instructor or course for violation of or non-compliance with any provision of this section.

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL

365:25-5-34. Professional bondsman deposits

(a) Bondsman making an ~~original~~initial deposit required by 59 O.S. §1306, ~~or replacing any portion of a deposit~~, shall deliver the deposit to the office of the Insurance Commissioner in Oklahoma City, Oklahoma. The bondsman shall appear in person at the office of the Insurance Commissioner to execute an assignment or pledge of the deposit ~~to the Insurance Commissioner~~ as instructed by 59 O.S. §1306.

(b) Bondsman making an additional deposit required by 59 O.S. §1306, or replacing any portion of a deposit, may mail an executed assignment or pledge of the deposit to the Insurance Commissioner via certified mail. The additional or replaced deposit amount will not be added or included in the professional bail bondsman's deposit total until the additional or replaced deposit amount is received, processed, and accepted by the Oklahoma Insurance Department staff.

(c) The phrase "required level," as described by 59 O.S. § 1332 (D)(4)(b), shall be the bondsman's amount on deposit prior to a forfeiture payment. A bondsman shall make a deposit equal to the amount withdrawn by the Commissioner following the Commissioner's withdrawal of professional securities to pay a bond forfeiture. The deposit shall be made within ten (10) days from receipt of the withdrawal notice or mailing of the notice if no receipt is made. The bondsman shall follow the provisions of paragraph (a) of this section for the deposit.

365:25-5-35. Bondsman license renewal

(a) Pursuant to 59 O.S. § 1309, bondsmen are required to renew their licenses biennially. Requirements for a complete renewal filing for a bondsman shall be submitted by the last day of the bondsman's birth month and must include each of the following:

(1) A Two Hundred Dollar ($200.00) renewal fee, and

(2) For professional bondsmen, a financial statement prepared in accordance with 59 O.S. § 1309(B).

(3) In case of renewal of a property bondsman license, the application shall also provide a county assessor's written statement stating the property's assessed value for each property used to post bonds and a written statement from any lien holder stating the current payoff amount on each lien for each property used to post bonds.

(b) Renewal filings or partial renewal filings submitted after the renewal date will be assessed a Two Hundred Dollar ($200.00) ~~late renewal~~reinstatement fee in addition to the usual Two Hundred Dollar ($200.00) renewal fee.

(c) Failure to complete the renewal process by the last day of the bondsman's birth month will result in an automatic expiration of the license. After the expiration, the license may be reinstated for up to one (1) year following the expiration date. If after the one (1) year date, the license has not been renewed, then the licensee shall be required to apply for a license as a new applicant.

(d) All licenses of bail bondsmen shall expire on the last day of the bondsman's birth month unless the Commissioner receives a complete renewal filing. A complete renewal filing consists of all necessary items required by paragraph (a) of this section as well as any other items required by the Commissioner.

(e) If the license has not been renewed by the expiration date, a bail bondsman shall not be authorized to continue acting as a bail bondsman.

(f) The Commissioner shall mail all renewal licenses to the bondsman's address of record

365:25-5-43. Appointments

The effective date of the bondsman appointment described in 59 O.S. § 1317 shall be the date the Commissioner ~~mails~~approves the completed appointment and notifies the bail bondsman's resident county court clerk.~~the completed appointment form to the appointed bondsman.~~

[OAR Docket #12-751; filed 5-25-12]

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

[OAR Docket #12-753]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
380:30-1-2 [AMENDED]
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Several provisions of Title 85 of the Oklahoma Statutes were repealed in 2011 and were recodified under different section numbers. The rule amendment will correct the outdated reference to Title 85 of the Oklahoma Statutes.
CONTACT PERSON:
Tiffany Wythe, Assistant General Counsel, (405) 521-6186 or tiffany.wythe@labor.ok.gov or Ray Andrews, Employment Standards Division Director, (405) 521-6600 or ray.andrews@labor.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

380:30-1-2. Definitions

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

"Commissioner", as used in these Rules, means the Commissioner of Labor or the Commissioner's designee.

"Bona fide disagreement" means, as used in 40 O.S. 165.4, a dispute in which the employer holds an honest and sincere belief that the wages claimed are not owed so long as that belief is supported objectively by the facts and circumstances and the employer took reasonable steps to ascertain the facts and circumstances.

"Claimant" means the same as "employee" or someone claiming wages due on behalf of a deceased employee.

"Department" and **"Agency"** mean the Department of Labor and/or the Wage & Hour Division of the Department of Labor.

"Earned and due" means that wages derived from labor or professional services are presently and immediately matured and enforceable and the time for payment has arrived. The term "earned and due" necessitates that all conditions precedent to payment have happened, have been met or have been performed. If the employment agreement is based either in whole or in part on payment of commissions, the terms of the agreement will control the time when commissions are earned and due. The Department of Labor has jurisdiction over only those claims for wages that are earned and due at the time the wage claim is filed. Any claims for "future wages" will be summarily rejected by the compliance officer or dismissed by the administrative hearing officer.

"Electronic means" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, electronic debit cards, and transfers initiated by telephone.

"Employee" means any person permitted to work by an employer. Employee shall not include: Business owners, independent contractors, volunteers, co-partners, or joint venturers. For purposes of these rules, those persons who are permissibly exempt from the Workers' Compensation statute, as defined in ~~85 O.S. § 3~~85 O.S. § 311, shall be considered "business owners" and not employees. A person who, pursuant to the terms of an employment agreement, has as their only form of compensation a potential interest in the proceeds or profits of a business (commonly called "working for sweat equity"), shall be considered a business owner and not an employee.

"Employer" means every individual, partnership, firm association, corporation, the legal representative of a deceased individual, or the receiver, trustee or successor of an individual, firm, partnership, association or corporation, employing any person in this state. "Employer" shall also include county, city, and municipal corporations, and all other local government entities. "Employer" shall not include the State of Oklahoma or any entity or branch of the United States government operating in this State.

"Established policy" means a statement, written or oral, or a course of conduct from or by the employer, of general applicability to all similarly situated employees regarding the business affairs of the employer. An "established policy" includes a written employment contract, a written employee manual or employment policy, or a written promise by the employer. An

"Established policy" also includes a verbal or implied promise by the employer that is supported by evidence of a past course of conduct consistent with the promise.

"Independent contractor" means one who renders service in the course of independent employment or occupation according to his own methods and is subject to his employer's control only as to the end product or final result of his work and not as to the means whereby it is to be accomplished. The following factors are considered significant in determining the employment relationship and whether a person is an employee or an independent contractor:

(A) the nature of the contract between the parties, whether written or oral;

(B) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent;

(C) whether or not the one employed is engaged in a distinct occupation or business for others;

(D) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(E) the skill required in the particular occupation;

(F) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;

(G) the length of time for which the person is employed;

(H) the method of payment, whether by the time or by the job;

(I) whether or not the work is a part of the regular business of the employer;

(J) whether or not the parties believe they are creating the relationship of master and servant; and

(K) the right of either to terminate the relationship without liability. No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case.

"Offsets" means deductions (as defined in this Subchapter); the value of any of the employer's money or property retained by the employee after termination; the amount of any prior overpayment of wages to the employee; and the amount of any prior valid final judgment obtained in a court of record or through an administrative agency, by the employer against the employee.

"Respondent" means the same as "Employer."

[OAR Docket #12-753; filed 5-25-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 1. ADMINISTRATIVE ORGANIZATION AND OPERATIONS

[OAR Docket #12-692]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
385:1-1-2 [AMENDED]
385:1-1-4 [AMENDED]
385:1-1-5 [AMENDED]
385:1-1-6 [AMENDED]
385:1-1-11 [AMENDED]
385:1-1-13 [NEW]
AUTHORITY:
64 Okla. Stat. § 1093; Department of the Commissioners of the Land Office
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Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2012.
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules primarily change references to statutes that have previously been renumbered and/or amended. The rules also contain changes that reflect the new physical address of the Commissioners of the Land Office (CLO). The rules also rename the administrative divisions within the CLO. Statutes referred to in these rule changes are: 64 Okla. Stat. §§ 1001, 1002 and 1034; 75 Okla. Stat. § 250.3.
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:1-1-2. Commissioners

The Commissioners of the Land Office of the State of Oklahoma hereinafter designated as Commissioners or Commission, as a body constitute an executive, administrative department of the State, which as such has charge of the sale, rental, disposal, and management of the school lands, and other lands of the public domain of the State, and of the funds and proceeds derived therefrom. Under the Constitution and statutes of the State, five high officers constitute the Commissioners, namely: The Governor, the Lieutenant Governor the State Auditor and Inspector the Superintendent of Public Instruction and the President of the Board of Agriculture. They are charged with duties as Commissioners in addition to the usual functions of the offices to which they are elected or appointed. See ~~Title 64, Section~~O.S. §§1001 and ~~Section 52 (1)~~1002. As Commissioners of the Land Office of the State they function as a body and not as individuals. The Governor is ex-officio chairman of the body and a vice-chairman is selected from the other members to perform duties prescribed by statute and by parliamentary rules.

385:1-1-4. Authorization to adopt rules and regulations

As such constituted body, the Commissioners are an agency within the definition of Section ~~301~~250.3 of Title 75~~, Okla. St. 1961~~. They are authorized to make rules and regulations and to formulate orders for the proper protection and preservation of the lands and funds under their control and the accomplishment of the purposes for which the Department known as the Commissioners of the Land Office has been established.

385:1-1-5. Meeting location; quorum

All meetings of the Commissioners shall be held at the State Capitol or as announced. Any three Commissioners at a meeting are a quorum and thereby constitute a lawful meeting; however, a concurrence of three members in a proposed action is necessary to make such action legal; provided, further, that no legal action taken at a previous meeting can be rescinded, annulled or substantially amended, except by ~~the unanimous vote of~~a three-fifths (3/5) vote of the full membership of the Commissioners [~~Title 64. Sec. 154 O.S. 1971~~64 O.S. § 1034]. The Commissioners as a body are often called "The Board" or "The Commission", and, when so designated, are so considered in their official actions as a body.

385:1-1-6. Land Office divisions

For the effective operation of its integrated activities, the Land Office has been divided into divisions under the following classifications: Administrative, ~~Legal,~~ Real Estate Management, Minerals Management, ~~Audit~~Royalty Compliance and~~Accounting~~ Financial Services, each of which operates under the general rules of the Legislature and the Land Office, but also under rules particularly relating to its own function. By statute, the positions in the Department are made interchangeable among and between several divisions at the will and discretion of the Secretary.

385:1-1-11. Rules and regulations

The Rules and Regulations which designate the manner in which the action of the Commissioners may be invoked in relation to the sale of oil and gas leases~~, the lending of State school~~

~~funds on mortgages on lands,~~ and the leasing or sale of school lands are set forth under the Rules and Regulations pertaining to the respective divisions in charge of such activities. Copies of such rules will be furnished on request.

385:1-1-13. Official business residence and website

The Land Office's official business residence is 120 N. Robinson, Suite 1000W, Oklahoma City, Oklahoma 73102. The Land Office's official website is www.clo.ok.gov.

[OAR Docket #12-692; filed 5-23-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 15. SALE AND OPERATION OF OIL AND GAS LEASES

[OAR Docket #12-693]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
385:15-1-3 [AMENDED]
385:15-1-4 [AMENDED]
385:15-1-6 [AMENDED]
385:15-1-8 [AMENDED]
385:15-1-9 [AMENDED]
385:15-1-18 [AMENDED]
385:15-1-20 [AMENDED]
385:15-1-21 [AMENDED]
385:15-1-22 [AMENDED]
385:15-1-25 [AMENDED]
385:15-1-32 [AMENDED]
AUTHORITY:
64 Okla. Stat. § 1012, 1093; Department of the Commissioners of the Land Office
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Gubernatorial Approval:
April 24, 2012
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2012.
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules primarily change references to statutes that have previously been renumbered and/or amended. The rules also contain changes that (1) reflect the new physical address of the Commissioners of the Land Office (CLO); (2) make certain information relating to oil and gas leases available electronically; and (3) make changes in order to have CLO oil and gas leases comply with changes previous adopted by the Corporation Commission. Additionally, the rules remove the fee schedule related to oil and gas leases and allow the Commissioners to set a new one as mandated by 64 Okla. Stat. § 1012. The statutes referenced in these rule changes are 64 Okla. Stat. §§ 1063-66. Rules referenced in these rule changes include: 385:15-1-12, 385:1-1-13, 385:15-1-9(b), and 385:15-1-20
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:15-1-3. Notice of Lease sale/results and tabulations

~~Any person or entity may receive free of charge, a copy of the notice of school land oil and gas lease sales and notice of the results of said sales upon receipt of a written request addressed to the Commissioners of the Land Office, P.O. Box 26910, Oklahoma City, OK 73126; Attn Minerals Management Division. Upon receipt of a $40.00 tabulation fee, the requestor will receive a copy of the bid tabulations from each lease sale for the remainder of the current calendar year. Said fee will include a subscription to the notices of sale and the notices of results of sales for the same period of time. Requests should include the following:~~

~~(1) Name of person or entity~~
~~(2) Title or position~~
~~(3) P. O. Box or street address~~
~~(4) City, State & Zip code~~
~~(5) Fee of $40.00 if tabulation report is requested.~~

Awards and Tabulations will be posted on the Land Office's official website [See 385:1-1-13]. Any person or entity who would like to receive Notices of Sale by electronic mail may do so by submitting a written request to the Land Office.

385:15-1-4. Lands available for leasing

Any tract of School Land not currently under lease may be offered for oil and gas lease purposes at the earliest scheduled oil and gas lease sale, upon receipt of a written request. Request should include the ~~same~~ contact information ~~requested in the rule above (385:15-1-3)~~of the Requestor and the complete legal description of the tract or tracts requested.

385:15-1-6. Public bid process

The public bid process for school land oil and gas lease sales shall be as follows:

(1) **Separate tract requirement.** A separate bid showing the tract number and legal description must be filed on each tract. Each tract will be leased separately to the highest responsible bidder. Drilling contracts or production payments will not be considered, except in a special lease sale.

(2) **Sealed bid requirement.** Bids must be written and enclosed in one sealed envelope, and placed in another envelope bearing notation on the outside front face of the envelope "Bids for Oil and Gas Leases" and the date of sale. Such bids must be delivered to the office of the ~~Secretary to the~~ Commissioners of the Land Office, and if sent by mail shall be addressed to the Commissioners of the Land Office's ~~Office, 5801 N. Broadway, 200 Paragon Building, P. O. Box 26910, Oklahoma City, Oklahoma, 73126~~ official business residence [See 385:1-1-13]. (No bid will be considered that is not delivered prior to date and time of sale.)

(3) **Time of sale.** Bids will be received ~~until 11:00 A.M. on date of sale,~~as provided in the Notice of Sale and are subject to the right of the Commissioners of the Land Office to reject any and all bids. (All bidders are invited to attend opening of bids which is held in the office of the Secretary to the Commissioners of the Land Office.)

(4) **Minimum bid accepted.** No bid of less than $5.00 per acre will be considered, except in a special lease sale.

(5) **Deposit required.** Each bid must be accompanied by a remittance in the sum of 25% of the amount bid, payable to the Commissioners of the Land Office. Upon acceptance of any bid and the awarding of the lease to the bidder, the successful bidder shall be liable for the full amount of the bid. The unsuccessful bidders will have their remittance check returned.

(6) **Bid forms ~~by request~~.** Bid forms ~~will be furnished on request.~~are available on the Land Office's official website [See 385:1-1-13].

(7) **Assignment of bids.** Oil and Gas Lease bids may not be assigned.

(8) **Special oil and gas lease sales.** The Commission will have a special oil and gas lease sale if they desire to consider bids other than standard lease terms. This notice of sale will be marked "Special Oil and Gas Lease Sale," and the terms and conditions of this sale will be as provided in the notice of said sale.

(9) **Bids become final.** All bids on mineral leases shall become final at the date and hour for opening bids and no bid may be withdrawn or rejected to correct an error by any bidder. ~~(Adopted April 6, 1982, effective April 26, 1982).~~

385:15-1-8. Lease terms

~~(a)~~ Pursuant to 64 O.S. ~~Sections 281~~§§ 1063 through ~~285~~1066 inclusive, a successful bidder for a corpus school land oil and gas lease will be issued a commence type lease requiring paid up delay rentals of $1.00 per net mineral acre to preserve the primary term on a form prescribed by the Commissioners, providing for royalty as established by a majority vote of the Commission; provided, that at least 28 days notice of intent to change the royalty policy is announced through two (2) newspapers with normal statewide circulation, and departmental publications; Intent to change the royalty policy which announcements shall contain the date and time and place which the Commission may vote on the proposed change;

~~(b) Pursuant to 64 O.S. Section 82(d) leases on minerals acquired through foreclosure, where the Commissioners of the Land Office no longer own the surface, shall be at no less than one-eighth (1/8th) and shall be set before the Commissioners as an irrevocable bid even though the staff of the Minerals Management Division invites offers or negotiates for terms it will recommend for acceptance. If more than one party negotiates offers at different royalty rates, terms or other provisions, the Minerals Management Division may convert to sealed bid procedure for final offers prior to submission to the Commissioners.~~

385:15-1-9. Performance fee, bond and bonus deadline

(a) All successful bidders of oil and gas leases subsequent to May 11, 1998 shall be required to pay a Performance Fee in an amount equal to .007 of the lease bonus but not to exceed an amount equal to $2.00 per net mineral acre. Said fee shall be placed in the ~~CLO revolving fund under an oil and gas indemnity account with interest accrued~~Land Office's Performance Fee Escrow Account with interest accrued.

(1) The lessee shall have thirty (30) days from the date of award of the lease to do the following:

(A) Pay the Performance fee;

(B) Execute the oil and gas lease and return it to the CLO;

(C) Pay the balance of the bonus and delay rental due;

(D) Pay any actual advertising costs that are in excess of the advertising deposit.

(2) The Lessee may have a longer period of time to complete (a) above if an extension is granted in writing by the Director of the Minerals Management Division or his or her designee.

(b) All Lessees holding an interest in oil and gas leases executed prior to May 11, 1998, may terminate their bonding requirement pursuant to 385:15-1-20 upon the payment of a one-time Performance Fee in accordance with the following schedule:

(1) 1 to 5 leases owned: $300.00
(2) 6 to 10 leases owned: $325.00
(3) 11 to 15 leases owned: $350.00
(4) 15 to 20 leases owned: $400.00
(5) 21 to 60 leases owned: $450.00
(6) 61 to 180 leases owned: $500.00
(7) 181 or more leases owned: $550.00

(c) Said fee shall be placed in the ~~CLO revolving fund under an oil and gas indemnity account with interest accrued~~Performance Fee Escrow Account. The payment of the Performance Fee shall cover all leases that were formerly covered under the Lessee bond, including the interest(s) of Lessee(s) added by virtue of an Appointment of Lease Operator form or the current Bond Appointment form. Bonded lessees electing not to pay said Performance Fee will be required to maintain their bond pursuant to 385:15-1-20 herein.

(d) The ~~oil and gas indemnity account~~Performance Fee Escrow Account shall be used to insure that the lessee faithfully operates the lease premises and complies with all lease terms

and provisions and ~~CLO~~Land Office's oil and gas rules and regulations. This may include but is not limited to the payment of uncollectible royalty payments, plugging wells, cleaning up well sites, tank battery sites and pipelines, and the reclamation of soil and vegetation, ponds and water ways. Said fee shall not minimize or relieve the lessee of any liability or obligation that exists or may arise from the operations of the lease, nor limit in any manner the ~~CLOs~~Land Office's remedies at law.

(e) Said Performance Fee shall be maintained until such time that the ~~oil and gas indemnity account~~Performance Fee Escrow Account exceeds $250,000.00, at which time the performance fee will be discontinued until such time that it falls below $200,000.00, at which time the Performance Fee will be reinstated. The Secretary of the ~~CLO~~Land Office will provide notice of any such discontinuance or reinstatement of said Performance Fee through the Notice of Oil and Gas Lease Sale that is published.

(f) Claims against the ~~revolving fund~~ Performance Fee Escrow Account will be paid only upon the recommendation of the Director of the Mineral Management Division and the approval of the Secretary of the CLO. Said Director will insure that all other sources of payment of any claim, have been considered and/or exhausted before recommending payment from the fund. Said Director will also consider the primary purpose of creating said fund which is to preserve and protect the assets of the School Land Trust when no other source is available. The payment of any one claim shall not exceed ~~10%~~ 20% of the then existing ~~revolving fund~~Performance Fee Escrow Account.

(g) The appointment of Lease Operator (for bonding purposes) form, created pursuant to 385:15-1-12 has been terminated. Therefore, all Lessees holding an interest in oil and gas leases executed prior to May 11, 1998, whose bond requirement is not satisfied will be required to comply with one of the following:

(1) Pay the one-time Performance Fee based upon number of leases owned;

(2) Pay $1.00 per net acre owned with a minimum of $25.00 per lease owned;

(3) Post a Surety Performance Bond in an amount prescribed by the Commissioners pursuant to 385:15-1-20.

385:15-1-18. Forms available on ~~request~~website

~~The following Commission Reports and other forms will be furnished on request:~~

~~(1) CLO FORM 7-1 Oil and Gas Lease~~

~~(2) CLO FORM 102 Assignment of Oil and Gas Lease~~

~~(3) CLO FORM 7-4 Blanket Performance Bond~~

~~(4) CLO FORM 106C Division Order~~

~~(5) CLO FORM 107 Bid Form~~

~~(6) CLO FORM 108 Lessee's Monthly Report of Oil Produced and Sold~~

~~(7) CLO FORM 109 Lessee's Monthly Report of Gas and Casinghead Gas Produced and Sold~~

~~(8) CLO FORM 112 Uranium and Rare Earth Prospecting Permit~~

~~(9) CLO FORM 113 Salt Water Disposal Lease~~

~~(10) CLO FORM 114 Common Tank Battery Agreement~~

~~(11) CLO FORM 115 Seismograph Exploration Permit~~

~~(12) CLO FORM 116 Subordination of Mortgage~~

~~(13) CLO FORM 117 Assignment of Rentals and Royalties (Certificate of Purchase)~~

All forms relevant to the sale and operation of the Land Office's oil and gas leases are posted on the Land Office's official website [See 385:1-1-13].

385:15-1-20. Bond requirements

(a) **Amount of bond; forms.** Each mineral lessee whose interest(s) is not covered by a performance fee must post a Performance Bond to cover the following agreements with this Department:

(1) Bond posted must be in the total sum required to cover any or all agreements in accordance with the following:

(A) Oil & Gas Lease Bond (one or more leases) - $10,000.00

(B) Salt Water Disposal Agreement - $10,000.00

~~(C) Mineral Lease on coal, copper, uranium or other mining leases (except oil & gas) - $12,500.00~~

(2) All bonds must be prepared on Commission forms. Bond forms will be supplied upon request. Maximum bond required for Oil and Gas Leases and related operations (on current Department form).

(b) **Release of bond.** Bonds will be released upon written request of the lessee or bonding company when all contracts covered thereby are satisfactorily terminated as determined by the CLO.

(c) **Underwriter requirements.** All surety bonds must be made by a company authorized to do business in the State of Oklahoma.

(d) **Cash deposit for loan of abstracts.** Firms desiring to borrow abstracts may post a cash deposit in the amount of $500.00 which is required, to insure the return of the abstracts borrowed. Upon return of said abstracts the deposit will be refunded.

(e) **Cash Bond as Performance Bond.** A mineral lessee as defined in (a) above may post a bond by submitting cash in the amount of $10,000.00 as a Performance Bond with the Commissioners of the Land Office, from which the Commissioners of the Land Office may debit, or draw the entire sum, to pay for loss or damage resulting from the lessee's operations, or violations of the duties and obligations imposed by the lease. The bonds are not substitute liability, or liability limits but merely serve as minimal security for the debts and obligations. The lessee shall not be entitled to interest while this bond is held by the Commissioners of the Land Office.

385:15-1-21. Requirements for consents to assignments

(a) **Bond of assignee.** If the interest of a lessee is not covered by the payment of a Performance fee pursuant to 385:15-1-9(b), the lessee must post a bond pursuant to 385:15-1-20. If the interest of a lessee is covered by said Performance fee, no bond is required.

(b) **Copy of assignment.** All requests for approval of Assignments must be accompanied by fully executed copies of said assignments and the required transfer fee of $25.00, per assignment per lease, both of which will be retained by this Department. When all requirements of this department have been completed the Commission will prepare and issue a written Consent to Assignment. No assignment of a State lease will be valid or vest any interest in the assignee until same is approved in writing by the Commission.

(c) **Assignment forms.** Assignments of State leases may be made on any assignment form in general use in the oil and gas industry and may convey a subdivision, an undivided interest, or a vertical subdivision.

(d) **Accompanying agreements.** All assignments presented for approval~~,~~ which are subject to other agreements, upon request of the Land Office, must be accompanied by a copy of such other agreement.

(e) **Assignments of overriding royalties.** Assignment or grants of overriding royalty do not require approval of the Commission.

385:15-1-22. Well installation and maintenance requirements

~~(a) **Earthen tank restrictions.** All earthen tanks used for storage of B.S. and salt water shall be constructed in accordance with Oklahoma Corporation Commission rules and shall be so located and constructed as to prevent damage to the surrounding surface area, or creeks and ravines, and shall not be located in any draw or ravine. Upon demand by the Commissioners of the Land Office, the oil and gas lessee shall, within fifteen days from receipt of such notice, be required to enclosed all earthen tanks or reservoirs for salt water, or B.S. and other installations, with substantial three-wire fence, and shall maintain same during the time such pits, reservoirs or installations exist.~~

(~~b~~a) **Pipeline depth.** All pipelines must be buried and maintained ~~below plow depth~~at a minimum of three (3) feet below the surface.

(~~c~~b) **Identification of well.** Within thirty days of the completion of a producing oil or gas well, a sign shall be posted showing the name and number of the well and the legal description.

(~~d~~c) **Surface casing.** All wells drilled for oil, gas or salt water disposal, shall set surface casing below all fresh water strata, and be cemented from bottom to top.

(~~e~~d) **Enclosures of well property.** Upon demand by Commission all salt water tanks, oil tanks and other lease installations shall be enclosed with earthen dikes sufficient to protect the lease from damage by leakage and overflowing. The oil and gas lessee shall erect and maintain substantial gates or cattle guards on all entrances to the lease or any subdivision thereof.

(~~f~~e) **Saltwater disposal well applications.** Salt water, other than that produced from the leased lands, may not be disposed of in wells on State land unless pursuant to written agreement with the Commission. Applications for salt water disposal agreements should be accompanied by a plat showing the location of all wells from which the salt water is produced, and the amount of salt water and oil produced by each well. (For fees and agreements, contact the Real Estate Management Division.)

(~~g~~f) **Plugging requirements.** The lessee shall securely plug all dry, or abandoned, wells in the manner required by the rules and regulations of the Oklahoma Corporation Commission and the Laws of the State of Oklahoma.

(~~h~~g) **Care of surface.** The lessee shall maintain all installations in a neat and workmanlike manner. All equipment or supplies not needed in day to day operation of the lease shall be removed from the lease. All dry or exhausted wells shall be plugged immediately upon abandonment. The lessee shall repair immediately any damages caused by his operation to terraces, waterways, or any other soil conservation practice.

(~~i~~h) **Removal of equipment and restoration of surface after lease termination.** Upon termination of a lease, the lessee shall have ninety (90) days thereafter to restore surface area, remove any casing, production facilities or equipment and plug any well or wells on said lease unless an extension of time is granted in writing by the Commissioners of the Land Office, any material not removed in said time shall be forfeited to the State. An inspection will be made ninety (90) days after termination and a fee of One Hundred Dollars ($100.00) will be charged if the requirements of this paragraph have not been met. Likewise, additional inspections will be made at thirty (30) day intervals until restoration of the surface and removal of material is completed. The fee will apply to each inspection.

385:15-1-25. Monthly production reports

~~(a)~~ **Oil and gas.** On or before the last day of the month following the month of production, the oil and gas lessee must file a sworn monthly report of oil, gas and casinghead gas produced and sold from the leased premises. This report will be filed on Commissioners of the Land Office form and must be completed in detail. (Forms furnished on request.)

~~(b) **Metallic ores.** On or before the last day of the month following the month of production, the lessee must file a sworn monthly report of uranium, coal, copper or other minerals produced and sold from the leased premises. This report must be filed on Commissioners of the Land Office form and must be completed in detail. (Forms furnished on request.)~~

385:15-1-32. Deposit and fee schedule

~~The following fee schedule establishes fees charged by the Commissioners of the Land Office:~~

~~(1) Deposit Schedule~~

~~(A) Bidding Deposit: 25% of bid price~~

~~(B) Advertising Deposit: See 385:15-1-7~~

~~(C) Abstract Deposit: $500.00~~

~~(2) Fee Schedule:~~

~~(A) Common Tank Battery Agreement: $250.00 per lease~~

~~(B) Consent to Assignment (per lease): $25.00~~

~~(C) Certification of Instrument: $10.00~~

~~(i) Plus charge per page): $ 0.10~~

~~(D) Certificate of Records:~~

~~(i) Base Cert.: $75.00~~

~~(ii) Supp. Cert.: $50.00~~

~~(iii) charge per page: $ 0.10~~
~~(iv) Research time per hour: $15.00~~
~~(E) Filing by cert, of purchase holder: $12.50~~
~~(F) Performance (New Lease): $.007 of lease bonus~~
~~(G) Oil and gas research time per hour: $15.00~~
~~(H) Return Check Fee: $20.00~~
~~(I) Seismographic Application: $200.00~~
~~(J) Seismographic fee: 0 to 10% of lease value~~
~~(K) Subordination agreement: $ 50.00~~
~~(L) Tabulation of lease bids: $ 40.00~~
~~(M) Transfer of Easement: $ 25.00~~

The amount of deposits and fees shall be based upon a schedule of fees established by the Commissioners. The fee schedule shall be posted on the Land Office's official website [See 385:1-1-13].

[OAR Docket #12-693; filed 5-23-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 20. SALE AND OPERATION OF ~~COAL AND URANIUM~~ HARD ROCK MINING AND OTHER MINERAL LEASES

[OAR Docket #12-694]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
385:20-1-1 [AMENDED]
385:20-1-2 [AMENDED]
385:20-1-3 [AMENDED]
385:20-1-6 [REVOKED]
385:20-1-7 [AMENDED]
385:20-1-9 [AMENDED]
385:20-1-10 [AMENDED]
385:20-1-11 [AMENDED]
385:20-1-12 [AMENDED]
385:20-1-13 [AMENDED]
385:20-1-14 [AMENDED]
385:20-1-15 [AMENDED]
385:20-1-16 [AMENDED]
385:20-1-17 [AMENDED]
385:20-1-19 [REVOKED]
385:20-1-20 [AMENDED]
385:20-1-21 [AMENDED]
385:20-1-22 [AMENDED]
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
These rules primarily change references to statutes that have previously been renumbered and/or amended. The rules also contain changes that reflect the new physical address of the Commissioners of the Land Office (CLO). The rules also change certain language in order to more accurately reflect terminology currently used in the mining field. The rules grant the CLO the ability to streamline the process by which geophysical prospecting permits are granted. The rules also remove the requirement that performance bonds be posted prior to the granting of a prospecting permit or other hard rock or mineral lease. Statutes referred to in these rule changes include: 64 Okla. Stat. §§ 1090, 1094; 75 Okla. Stat. §§ 318-323. Administrative rules referenced in these rule changes include: 385:1-1-13.
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:20-1-1. Purpose

The rules of this chapter have been adopted to establish the requirements and procedures whereby an interested party may acquire a ~~coal and/or uranium~~hard rock mining or other mineral lease from the State of Oklahoma upon School Land. Said rules describe the progressive steps that are required from permitting through leasing. These rules also describe the treatment of the lease from issuance through termination and release including bonding and reporting requirements.

385:20-1-2. Mailing list for notice of lease sale

~~Anyone desiring to receive notice of School Land Coal or Uranium Mining Lease Sales and the results thereof may have his name placed on the permanent mailing list without cost, upon receipt of a written request addressed to the "Commissioners of the Land Office, 5801 North Broadway 200 Paragon Building, P. O. Box 26910, Oklahoma City, Oklahoma 73126, Attention: Minerals Management Division." (Those already receiving notice of Oil and Gas Lease Sales will also receive notice of other mineral lease sales.) Upon receipt of a $40.00 tabulation fee, the requestor will receive a copy of the bid tabulations from each lease sale for the remainder of the current calendar year. Each request should include the following information:~~

~~(1) Name of Company or Firm requesting.~~
~~(2) Title or Position.~~
~~(3) Post Office Box or Street Number.~~
~~(4) Fee of $40.00 if tabulation report is requested.~~

Notice of hard rock mining and other mineral lease sales will be posted on the Land Office's official website [See 385:1-1-13]. Any person or entity who would like to receive Notices of Sale by electronic mail may do so by submitting a written request to the Land Office.

385:20-1-3. Prospecting permits

~~No entry shall be made upon any lands under the jurisdiction and control of the Commissioners of the Land Office for the purpose of prospecting for minerals without a prospecting permit or mining lease.~~

~~(1) **Application form.** Application for prospecting permit shall be filed on Commissioners of the Land Office form.~~

~~(2) **Filing.** Application must be filed with the Secretary of the Commissioners of the Land Office during office hours at 5801 North Broadway in Oklahoma City, Oklahoma.~~

~~(3) **Application requirements.** Prospecting permits may be issued only to an individual who is a citizen of the United States, or a firm or corporation authorized to transact business in the State of Oklahoma.~~

~~(4) **Maximum term and acres.** No permits shall be issued for a period of more than one year and shall not cover more than 160 acres.~~

~~(5) **Permit fee.** The permit fee shall be $1.00 per acre for a period of one year.~~

~~(6) **Refund.** Prospecting permit fees fixed by the Commissioners of the Land Office, which must be submitted with each application, will not be refunded unless said application is rejected by the Commissioners of the Land Office.~~

~~(7) **Processing.** Applications will be considered in the order in which they are received by the Secretary of the Commissioners of the Land Office.~~

~~(8) **Rejection.** The Commissioners of the Land Office shall have the right to reject any and all applications.~~

~~(9) **Approval.** If the application is approved by the Commissioners of the Land Office, the applicant shall be issued a permit on Commissioners of the Land Office form.~~

At the discretion of the Director of the Minerals Management Division, a geophysical/geochemical prospecting permit may be issued for the purpose of prospecting minerals without a lease. Cost and term of the permit are at the discretion of the Secretary of the Commissioners of the Land Office. No prospecting permit shall exceed one year in length.

385:20-1-6. Report of valuable mineral discovery [REVOKED]

~~If a valuable mineral is discovered, the holder of a prospecting permit must file a detailed report of same within 30 days with the Secretary of the Commissioners of the Land Office. Said report shall be on form prescribed by the Commissioners of the Land Office.~~

385:20-1-7. Land subject to other lawful uses

All land owned by the ~~State of Oklahoma~~Commissioners of the Land Office shall be subject at all times to any other lawful uses by the Commissioners of the Land Office, their lessees, permittees, licensees and assignees; provided, that such use shall not prevent, obstruct or unduly interfere with the permittees in the exercise of any privilege hereby granted.

385:20-1-9. Inspection of lands

The State reserves the right to inspect all lands covered by a prospecting permit at all times and the right to cancel any permit upon violation of any terms or conditions of such permit or the laws of the State of Oklahoma relating to or affecting school or public lands, after the expiration of 10 days from date of mailing notice by ~~Registered~~Return Receipt Mail to the last known address of the lawful owner and holder of the prospecting permit or by posting notice in writing upon said premises, specifying the terms, conditions or laws violated.

385:20-1-10. Termination of prospecting permits upon issuance of lease

All prospecting permits shall become null and void upon issuance of a hard rock mining or other mineral lease, by the Commissioners of the Land Office, covering area in said permit.

385:20-1-11. Fines

Any person who violates any of the provisions of 64 O.S. ~~Sec. 451~~§ 1090 et seq. will be subject to a fine of not less than $50.00 or more than $50,000.00 or imprisonment for not less than 30 days or more than 10 years, pursuant to 64 O.S. ~~Sec. 459~~§ 1094.

385:20-1-12. Prospecting permit bonds

~~For prospecting permit bond requirements see performance bond requirements set forth in 385:20-1-19.~~Bond amounts required for prospecting or hard rock mining or other mineral leases will be established by the Secretary of the Commission and incorporated into the lease permit.

385:20-1-13. Request to offer land for lease; advertising deposit and requirements

(a) Any tract of State School land not under a ~~coal or uranium~~hard rock mining or other mineral lease will be offered for lease at the earliest scheduled ~~coal or uranium~~hard rock mining or other mineral lease sale, ~~upon receipt of a written request, accompanied by a check in the amount of $200.00 as an advance deposit to cover the cost of advertising~~at the discretion of the Director of the Minerals Management Division. (The firm making the above request will have to pay actual cost of advertising if it is the successful bidder or if no bids are received. The firm making the request may be required to pay advertising cost if the bid is rejected.)

(b) The law requires that State School land offered for ~~coal or uranium~~hard rock mining or other mineral lease must be

advertised for 30 days in a newspaper published in the County in which the land is located and for a like period in a paper of general circulation in Oklahoma, after which the bids received will be opened, tabulated, and presented to the Commission at the next regular meeting.

(c) The successful bidder must pay the cost of advertising.

385:20-1-14. Bidding process

The bid process for school land ~~coal and uranium~~hard rock mining and other mineral lease sales shall be as follows:

(1) **Separate tracts.** A separate bid showing the tract number and legal description must be filed on each tract. Each tract will be leased separately to the highest responsible bidder.

(2) **Sealed bids.** Bids must be written and enclosed in one sealed envelope and placed in another envelope bearing notation on the outside front face of the envelope "Bids for ~~Coal or Uranium~~Hard Rock Mining or Other Mineral Leases" and the date of sale. Such bids must be delivered to the office of ~~the Secretary to~~ the Commissioners of the Land Office, and if sent by mail shall be addressed to the official business residence of the Commissioners of the Land Office, ~~5801 North Broadway, P. O. Box 26910, Oklahoma City, Oklahoma, 73126~~as posted on the Land Office's official website [See 385:1-1-13]. (No bid shall be considered that is not delivered prior to date and time of sale, as set forth in the Notice of Sale.)

(3) **Bid opening.** Bids will be received ~~until 11:00 A. M., on date of sale,~~as provided in the Notice of Sale and are subject to the right of the Commissioners of the Land Office to reject any and all bids. (All bidders are invited to attend opening of bids which is held in the office of ~~the Secretary to~~ the Commissioners of the Land Office.)

(4) **Bid deposit.** Each bid must be accompanied by a remittance of earnest money as required in the notice of sale, payable to the Commissioners of the Land Office. Upon acceptance of any bid and the awarding of the lease to the bidder, the successful bidder shall be liable for the full amount of the bid.

(5) **Forms.** Bid forms will be furnished on request.

(6) **Assignment.** ~~Coal or uranium~~Hard rock mining and other mineral lease bids may not be assigned.

(7) **Total acres.** Each ~~coal or uranium~~hard rock mining and other mineral lease will be limited to a maximum of 160 acres.

385:20-1-15. Issuance of ~~coal and uranium~~hard rock or other mineral lease

(a) **Term of lease.** A successful bidder will be issued a five-year ~~coal and uranium~~hard rock mining or other mineral lease on form prescribed by the Commissioners, providing for royalty as stated in the ~~notice~~ Notice of ~~sale~~sale.

(b) **Lease executions.** All leases and bonds will be prepared by the Commission and forwarded to the lessee for completion. The lessee shall have 30 days from date of award to execute the lease, post a bond, and pay any moneys due.

(c) **Lease approval.** The tabulation of each ~~coal or uranium~~hard rock mining or other mineral lease sale will be presented to the Commissioners at their next regular meeting for approval and consideration of award of leases.

385:20-1-16. Lease cancellation

(a) **Notice.** Upon violation of any of the substantial terms of a ~~coal and uranium~~hard rock mining or other mineral lease, or the rules and regulations of the Commission pertaining thereto, the Commission shall issue a notice of proposed cancellation by ~~registered mail~~ Return Receipt Mail to the last known address of the lessee, specifying said rule or rules, terms or conditions which have been violated.

(b) **Hearing.** The lessee may, within 15 days from the date of mailing of such notice, request a hearing at which he may show cause, if any he has, why the lease should not be canceled. Upon receipt, by the Secretary of the Commission, of a written request for hearing, the matter shall be set for hearing before an outside Hearing Officer to be selected by the Commissioners, who will set a date, time and place certain for a hearing and the lessee shall be immediately advised thereof by registered mail not less than 15 days prior to such hearing. Prior to the date set for such hearing the lessee may file with the Hearing Officer a written response setting forth the reasons such lease should not be canceled and forfeited. Affidavits, depositions or other written or documentary evidence in support of the matters and things alleged in said response may filed therewith, in which case the lessee need not appear in person or by counsel at the hearing herein provided for and may rest on such written proof. If a hearing is not requested, the Commission may proceed to the cancellation of the lease without further notice to the lessee. The Hearing Officer shall conduct the hearing at the time and place designated, or at the time and place to which said matter is adjourned or continued. At such hearing evidence and oral arguments in support of the alleged violation giving rise to the notice of proposed cancellation and in support of the material allegations of the written response thereto will be heard, such time being allowed therefor as the Hearing Officer shall direct. The Hearing Officer shall make a full report of said hearing to the Commission, orally or in writing, as the Commission may direct. The lessee shall be promptly notified of the decision of the Commission, and the lessee or any other interested party aggrieved by such decision shall be allowed a judicial review to the District Court of the County were the leased premises are situated, in accordance with the provisions of Section 318, Title 75, Oklahoma Statutes; thereupon he procedure and rights involved shall be determined in accordance with the provisions of said Section 318 and the following Sections of said Title §§319, 320, 321 and 322, with the right of appeal to the Supreme Court from the lower court's action as provided by Section 323 of said Title 75. The judicial review referred to is to be had by filing a petition therefor in the District Court within 30 days after the appellant had notice of the order, to be appealed from, as provided in said statute. The review shall be conducted by the Court with a jury, and shall be confined to the record.

385:20-1-17. Lease release

Upon payment of all liabilities then accrued and due the Commission the ~~coal and uranium~~hard rock mining or other mineral lessee may, at any time surrender and terminate a ~~State~~Land Office lease by filing a formal relinquishment and release of said lease with the Secretary of the Commission, provided that if such lease has been recorded in the county, the release thereof must be recorded in the county prior to the filing with the Secretary of the Commission.

385:20-1-19. Performance bond; release [REVOKED]

~~(a) Each lessee must post a Performance Bond to cover the following agreements with this Department. Bond posted must be in the total sum required to cover any or all agreements in accordance with the following schedule:~~

~~(1) Prospecting Permit - $5,000.00 Each~~

~~(2) Coal Lease - $2,500.00 Each (Maximum Coal Mining Bond Required - $12,500.00)~~

~~(3) Uranium Lease - $2,500.00 Each (Maximum Uranium Mining Bond Required - $12,500.00)~~

~~(b) Performance bonds will be released upon written request of the lessee or bonding company when all contracts covered thereby are terminated.~~

385:20-1-20. Assignments of leases

~~Assignments of State coal and uranium Leases may be made on any assignment form in general use in the coal or uranium industry.~~Leases may be assigned at the sole discretion of the Secretary of the Commissioners of the Land Office. The Land Office reserves the right to refuse assignment of hard rock mining or other mineral leases for any reason it deems appropriate. The Land Office reserves the right to require additional surety in any form it deems appropriate.

385:20-1-21. Monthly reports

On or before the last day of the month following the month of production, the ~~coal and uranium~~hard rock mining or other mineral lessee must file a sworn monthly report of uranium, coal, copper or other minerals produced and sold from the leased premises. This report must be filed on Commissioners of the Land Office form and must be completed in detail. (Forms furnished on request.)

385:20-1-22. Special reports

The Commission may require special reports pertaining to operation of a State ~~coal and uranium~~hard rock mining or other mineral lease. Upon request, the lessee must promptly submit the required reports.

[OAR Docket #12-694; filed 5-23-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 25. SURFACE LEASING FOR AGRICULTURAL AND COMMERCIAL PURPOSES

[OAR Docket #12-695]

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PERMANENT Final Adoption
RULES:
385:25-1-1 [AMENDED]
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385:25-1-5 [AMENDED]
385:25-1-7 [AMENDED]
385:25-1-12 [AMENDED]
385:25-1-13 [AMENDED]
385:25-1-15 [AMENDED]
385:25-1-22 [AMENDED]
385:25-1-23 [AMENDED]
385:25-1-24 [AMENDED]
385:25-1-25 [AMENDED]
385:25-1-31 [AMENDED]
385:25-1-33 [AMENDED]
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385:25-1-40 [REVOKED]
385:25-1-41 [AMENDED]
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules primarily change references to statutes that have previously been renumbered and/or amended. The rules also grant the Commissioners of the Land Office (CLO) the ability to accept bids on surface leases from individuals or entities who are in default of any annual rent due or in violation of a provision of a prior lease. The rules also establish a procedure by which the CLO maintains fair market rental value of all agricultural leases during the term of the lease. Statutes referenced in these rule changes include: 60 Okla. Stat. § 334; 64 Okla. Stat. §§ 1023, 1056, and 1059.
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:25-1-1. Purpose

This Chapter establishes procedures for acquiring a surface lease on School Land either for agricultural or commercial purposes as authorized by 64 O.S. §§~~101; 241~~1023 and 1056 et seq. or acquiring an easement across trust lands.

385:25-1-2. Definitions

In addition to terms defined in 64 O.S. ~~101, 241~~§§ 1023 and 1056 et seq. the following words or terms when used in this Chapter shall have the following meaning unless the context indicates otherwise:

"Commercial lands" means those trust lands which may have a greater value or use which enables it to earn more income per year than if used strictly for agricultural purposes.

"Commission", "Commissioners",~~or~~ "CLO" or "Land Office" means the Commissioners of the Land Office of the State of Oklahoma.

"Fair market value" means the price which the property would bring if offered for sale in the open market by a seller willing but not obligated to sell and a buyer willing but not obligated to buy, both being fully informed of all purposes for which property is best adapted or could be used.

"Fair market rental value" means the annual price in cash a willing but not obligated tenant would pay, and a willing but not obligated landlord would charge for the same or similar lands for the highest and best legal use of the property, agricultural or commercial.

"Improvements" means buildings or other permanent or temporary structures or developments located on or attached to the land.

"Preference right lease" means the right of the lessee holding a lease designated with a preference right that the Commissioners elect to sell during the lease term to purchase the land at the highest bid under a two-tiered bidding system.

"Secretary" means the Secretary of the Commissioners of the Land Office and includes the Assistant Secretary.

"State" means Oklahoma.

"Two-tier bidding system" means a public auction procedure under which a first tier of bidding open to the general public is conducted to establish the highest initial bid. A second tier of bidding is then held in which the preference right lessee can match the bid of the party holding the highest initial bid and any subsequent raises by the initial highest bidder until no higher bid is made or the preference rights lessee refuses to match a raise in bid.

385:25-1-4. Leases in writing

All leases of lands for agricultural~~, grazing~~ or commercial purposes shall be in writing and shall be upon such terms and conditions and at such rental as may be determined by the Commissioners. All such leases shall be upon the form furnished by the Commissioners. All leases shall contain the proper legal designation, including section, township, range and county.

385:25-1-5. Awarding or renewal of surface lease

(a) **Agricultural ~~or grazing~~ lease terms.** All surface leases for agricultural ~~or grazing~~ purposes ~~for more than three (3) years~~ will be appraised for market value annual rental and offered at public bid for terms not to exceed five (5) years at not less than the appraised market value.

(b) **Short term commercial leases.** The granting of a commercial lease for three (3) years or less must be at not less than fair market value but does not have to be publicly bid.

~~(c) **Annual payment.** All leases will be billed annually.~~

(c~~d~~) **No renewal rights.** All rights under ~~the~~an agricultural lease expire when the lease term expires and no renewal right exists.

(d~~e~~) **Lessee in default.** The Commissioners ~~shall~~may refuse any bid for a surface lease where the party bidding is in default of any monies due or in violation of any provision of a prior or current lease contract.

385:25-1-7. Term of surface lease

The term of all surface leases will be in compliance with ~~Title~~ 64 O.S. ~~Section 101~~§1023, and where applicable, at the sole discretion of the Commissioners.

385:25-1-12. Reservations in surface lease; easements

(a) **Easements.** The State shall reserve for itself, its lessees, permittees or grantees, and their assigns, easements for ingress and egress for ~~the~~any purpose of exploring for, drilling, producing, storing and marketing of oil, gas, coal, and any other minerals which may be produced from said premises, or from other premises communitized with Trust land and for any other purpose the Commissioners deem appropriate for use of the land.

(b) **Permanent and term easements.** Permanent easements may be granted to governmental entities and to railroad companies for expansion of railway lines. All other easements may be granted for a term not to exceed twenty (20) years. Both permanent and term easement(s) must be compensated for at fair market value and shall be approved by the Commissioners but do not have to be offered at public bid. Grantee shall be liable to surface lessee for surface damages to crops or lessee owned improvements.

(c) **Conversion of easement upon sale of land.** If a tract of trust land with a term easement (granted for 20 years or less) is sold; prior to such sale, the grantee of the term easement may request the Commissioners to convert the easement to a permanent easement. If the easement is converted to a permanent easement, the Trust shall be compensated for fair market value of the difference in value between the term easement and the permanent easement.

(d) **Rights of way.** Right of way easements will be granted pursuant to law and public policy at not less than fair market value.

(e) **Recreational use.** Agricultural leases include the right of lessee to use the lease for hunting, fishing or other recreational purposes. Lessee may post the property or may allow hunting and fishing. Lessee may retain any fees charged for hunting and fishing rights. This does not violate the subleasing provision of the contract.

385:25-1-13. Improvements on agricultural and short term commercial leases

(a) **Consent.** No improvements shall be placed upon School Land without written consent of the Commissioners.

(b) **Compliance with law.** Any improvements placed on School Land not in compliance with Commission rules or Oklahoma Statutes shall be deemed to become the property of trust fund to which the land belongs.

(c) **Authorization.** The Secretary is authorized to approve in writing, on behalf of the Commissioners of the Land Office, consent for a lessee to place improvements on School Land when the lessee has agreed in writing to remove said improvements at end of his tenure; provided, removal will not cause injury to the land.

(d) **Conservation work.** The Secretary is authorized to approve in writing, on behalf of the Commissioners of the Land Office, consent for a lessee to perform conservation work at his own expense when such practice will improve the land and is supported by a recommendation of a ~~Land~~Real Estate Management ~~Technician~~Specialist. ~~Provided, that the~~ The lessee will not acquire any interest in terraces, ponds, wells, trees, or any similar improvement which cannot be removed without manifest injury to the land.

(e) **Claim of ownership.** The Commissioners of the Land Office assert no ownership of improvements placed at lessees expense upon School Land and which were placed thereon in compliance with Commission policy and rules, and not in violation of Oklahoma Statutes (64 ~~Okl.St.Ann.~~O.S. §~~249~~ 1059 or 60 ~~Okl.St.Ann.~~O.S. § 334), existing and in effect at the time such improvements were placed on the land, and which can be removed without manifest injury to the land.

(f) **Statute.** The Commissioners of the Land Office will continue to comply with ~~Title 60, Okl.St.Ann. §344~~60 O.S. § 334: *When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require or permit the former to remove it: Provided, that a tenant may remove from the demised premises at any time during the continuance of his term any thing affixed thereto for purpose of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises*.

385:25-1-15. Maintenance of farm program

The lessee of agricultural~~, grazing~~ land ~~or both~~ shall comply with established farm programs to protect crop bases and allotments as set out in the invitation to bid and lease contract.

385:25-1-22. Awarding of leases

The awarding of all surface leases will be in compliance with ~~Title~~ 64 O.S. §§~~101; 241~~1023 and 1056 et seq; and the mandates of~~*O.E.A. V. Nigh*~~ *O.E.A. v. Nigh*, 642 P.2d 230 (1982), and where applicable, at the sole discretion of the Commissioners. The Notice of Invitation to Bid shall be incorporated by reference into the lease contract and be made part of it.

385:25-1-23. Procedure for public bidding

The public bid process for school land surface leases shall be as follows:

(1) **Notice.** The method for advertising the leases for public bid shall be at the sole discretion of the Commissioners, or their designee, and to provide the best method to provide the information to prospective lessees. The notice shall contain the following information:

(A) Lease number;

(B) Legal description;

(C) General directions to location of property;

(D) Minimum annual bid;

(E) Minimum cash deposit needed to perfect the high bidder's lease rights, method and manner of acceptable payment;

(F) Term of the lease;

(G) Such other information as the CLO deems necessary to adequately inform prospective bidders of terms and conditions of auction.

(2) **Date and location.** Auction shall be held at time, date and location as determined by the CLO.

(3) **Minimum bid.** No bid shall be accepted which is below the minimum fair market rental value established by the appraisers.

(4) **Right to refuse.** The Commissioners reserve the right to refuse any and all bids.

(5) **Minimum cash deposit.** Successful high bidder at auction shall pay at the time of the auction one-half of the annual rent for annual rent over $500.00 or all of the annual rent if $500.00 or below.

385:25-1-24. Execution of lease

~~(a)~~ Upon approval and acceptance by the Secretary to the Commissioners and receipt of the balance of the first year's rent, the lessee(s)' copy of the lease contract will be mailed to the successful bidder and Lessor's copy retained by ~~CLO~~the Land Office. Failure to execute and return copies of the lease contract shall operate to cancel award and deposit will be forfeited as liquidated damages at the option of the Commissioners.

~~(b) Commissioners shall refuse to accept any bid on agriculture or commercial lease where party bidding is in default of any annual rent due or in violation of any provision of a prior lease contract.~~

385:25-1-25. Right to harvest

~~Any lessee may, at the termination of his lease, remove any or all of his improvements, and he shall have the right to harvest~~

~~or remove any growing crop thereon: Provided, However, that in case the lessee is in default for nonpayment for any rental or assessment of any nature, he shall not be allowed to remove such improvement or make such entry to secure crops until all arrearage is fully satisfied; said improvements, that are movable, shall then be moved immediately within sixty days from termination of his lease~~*At the termination of a lease, the lessee may remove any or all improvements made by the lessee and shall have the right to harvest or remove any growing crop on the land. If the lessee is in default of any terms of the lease, the lessee shall not be allowed to remove the improvement or make entry to secure crops until all arrearage, including but not limited to interest, costs and attorney fees are fully satisfied. All improvements, that are movable, shall then be moved before expiration of the lease*. (64 ~~Okl.St.Ann.§249~~O.S. § 1059)

385:25-1-31. Subleasing

(a) **Prohibition of sublease of an agricultural lease.** Subleasing of an agricultural lease is prohibited~~ except as provided in 64 Okl.St.Ann. §253(a)~~.

(b) **Commercial leases.** Commercial leases may be subleased as provided in the commercial lease contract.

(c) **Sublease without permission cause for cancellation.** Should lessee sub-lease premises without written permission of the CLO, the lease shall be subject to cancellation and forfeiture at the option of the CLO as provided by law and these rules and regulations.

385:25-1-33. Procedure for appraisal of commercial leases

(a) Upon categorization of trust land as commercial and prior to its being offered for lease, an appraisal for fair market value shall be made by appraisers ~~of~~designated by the Land Office on ~~the~~a form ~~provided by~~acceptable to the Commissioners of the Land Office. Appraisals will be made in accordance with the Uniform Standards of Professional Appraisal Practice.

(b) All leases shall maintain fair market rental value throughout the term of the lease using methods such as escalators, percentage of gross income or reappraisal clauses.

385:25-1-39. Commercial lease rental [REVOKED]

~~(a) Annual rental shall be established by determining the fair market value rental of the commercial property using the Uniform Standards of Professional Appraisal Practices.~~

~~(b) All leases shall maintain fair market rental value throughout the term of the lease using methods such as escalators, percentage of gross income or reappraisal clauses.~~

385:25-1-40. Contract violations; default [REVOKED]

~~Violations of any provisions of the lease shall subject the lessee to legal or administrative action or both at the option of the Commissioners as defined by the lease contract.~~

385:25-1-41. Procedure for Exchanging Land

(a) **Authorization.** The Commissioners may authorize exchange of lands held in Trust for other lands held by other entities on an equal value basis.

(b) **Criteria.** It is the intent of the CLO to exchange lands held in Trust that are landlocked, too small in size to be an economic unit, low productivity, or transitional properties~~ where it is determined the use of the land is for residential housing purposes only~~.

(c) **Appraisal.** An appraisal for market value of the properties to be exchanged will be completed by three duly authorized appraisers. The CLO will choose an appraiser, the other entity will choose an appraiser and then the two appraisers will select a third appraiser. The appraisers will determine the market value of the respective properties and make a consensus appraisal report.

(d) **Valuation of Improvements of Agricultural Properties.** The intent of the exchange is for the Trust to receive equal value of land in exchange for equal value of land. Since ~~agricultural~~ improvements are a depreciating asset and may be removed by the owner of record and the CLO typically does not own improvements, the appraisal should only consider the value of the lands to be exchanged. Improvements such as waterwells, ponds, terraces, etc. are considered a part of the land and will not be considered within the exchange as a separate item.

(e) **Exchanges for Commercial Properties.** If the entity which is exchanging land with the CLO is exchanging commercial properties the improvements will be included as an essential element of the appraisal.

(f) **Title.** The entity which is exchanging land with the CLO shall provide an abstract of title for examination by the CLO or good and sufficient title insurance for the land being offered in the exchange. The CLO shall provide the entity an official certificate of record for the land owned by the CLO but does not warrant title.

(g) **Deeds.** The entity exchanging land with the CLO will provide a warranty deed for its lands and the CLO shall provide a patent to the entity for the CLO lands.

385:25-1-43. Right of Entry permits; Treasure Trove

The Commissioners, or their designee, may authorize issuing right of entry permits for the purpose of individuals searching for Treasure Trove on CLO Trust lands. The fee and term for the permit shall be determined by the appropriate land management personnel but in no case shall be less than $500.00. All exploration for Treasure Trove shall be done in a manner to protect the potential archaeological finds within the area to be searched. Machine excavation shall be limited and only done when appropriate precautions have been taken to protect the land and relics from damage.

[OAR Docket #12-695; filed 5-23-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 30. SALE OF SCHOOL LAND

[OAR Docket #12-696]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
385:30-1-3 [AMENDED]
385:30-1-9 [AMENDED]
AUTHORITY:
64 Okla. Stat. § 1093**;** Department of the Commissioners of the Land Office
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules primarily change references to statutes that have previously been renumbered and/or amended.
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:30-1-3. Request for sale of school land

An individual who wishes to request the sale of a particular tract of land is required to make a written offer which the applicant will agree to commence the bidding at public auction if the Commissioners elect to offer the land for sale. Upon receipt, such request will be presented to the Commissioners, and if they determine an appraisal is warranted, an appraisal will be made. The applicant will be notified of the appraised value. Associated costs of the sale including but not limited to the appraisal, advertising, and surveying will be assessed to ~~purchaser~~the successful bidder in addition to purchase price.

385:30-1-9. Certificates of purchase; transfer

(a) **Certificate of purchase.** If purchaser finances the land purchase through the Commissioners of the Land Office by terms in the Notice of Sale, the state will have a first lien upon the lands sold and the purchaser will be issued a Certificate of Purchase. When all payments are made the Commissioners shall execute to the purchaser a Patent.

(b) **Transfers.** Any purchaser of trust lands may transfer the interest in the real property under a Certificate of Purchase and upon approval of the Commissioners a new Certificate of Purchase will be issued to the transferee.

(c) **Default.** In case of default the Certificate of Purchase will be canceled ~~pursuant to 64 O.S. §216.1~~by the Commissioners.

(d) **Fencing.** Purchaser will be responsible for fencing the tract of land from any adjacent lands administered by the Commissioners of the Land Office and will be responsible for all damages or claims for damages arising out of purchasers failure to install and maintain such fence.

(e) **Taxes.** Trust property purchased under a Certificate of Purchase shall be assessed ad valorem taxes as against other privately owned lands. The Commissioners must have a statement from the county treasurer that all ad valorem taxes are paid before a transfer of Certificate of Purchase can be approved or Patent issued.

(f) **Validity.** A conveyance or assignment of any interest, entire or lesser, in the Certificate, shall have no validity as against the State or Commissioners of the Land Office unless such instrument is duly filed in the permanent records of the Commissioners of the Land Office.

[OAR Docket #12-696; filed 5-23-12]

TITLE 385. DEPARTMENT OF THE COMMISSIONERS OF THE LAND OFFICE CHAPTER 35. LOAN OF ABSTRACTS [REVOKED]

[OAR Docket #12-697]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
385:35-1-1 [REVOKED]
385:35-1-2 [REVOKED]
385:35-1-3 [REVOKED]
385:35-1-4 [REVOKED]
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64 Okla. Stat. § 1093**;** Department of the Commissioners of the Land Office
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
These rules remove the requirement of the Commissioners of the Land Office (CLO) to lend out abstracts to the public.
CONTACT PERSON:
Nancy Connally, General Counsel, Commissioners of the Land Office, 120 N. Robinson Suite 1000W, Oklahoma City, OK 73102, 405-521-4070.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

385:35-1-1. Purpose [REVOKED]

~~The rules of this Chapter have been adopted to establish the requirements and procedures for the general public to borrow abstracts in the use and possession of the Commissioners of the Land Office. These rules define the method and conditions under which the general public may borrow abstracts.~~

385:35-1-2. Fees [REVOKED]

~~Fees for services rendered by the Department of the Commissioners of the Land Office shall be as adopted by Resolution of the Commissioners of the Land Office.~~

385:35-1-3. Bond or deposit required; length of loan; late fee [REVOKED]

~~(a) Abstracts will be loaned upon receipt of a written request. If no bond is on file with the Commissioners of the Land Office a deposit will be required to insure safe return of the abstracts. Required deposit will be as specified in the fee schedule.~~

~~(b) Abstracts are loaned for a period of thirty days. If the abstracts are not in this office or a written extension has not been granted by the Records Division by the expiration of this period, a late fee, as specified in the fee schedule, will be charged until such time as an extension is granted or abstracts have been returned. Failure to return the abstracts will require forfeiture of the deposit. Abstracts are subject to recall by the Commissioners of the Land Office any time.~~

385:35-1-4. Condition of returned abstracts; refunds and penalties [REVOKED]

~~Upon the return of borrowed abstracts to the Commissioners of the Land Office UNALTERED, UNCHANGED AND IN GOOD CONDITION, the entire deposit, less the service fee and any penalties, will be refunded the borrower. If the abstracts are altered, changed, or damaged, a penalty will be assessed as provided in the fee schedule.~~

[OAR Docket #12-697; filed 5-23-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-637]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1.General Provisions
475:1-1-1. Purpose [AMENDED]
Subchapter 5. Administrative Actions
475:1-5-6. Submission and receipt of evidence [AMENDED]
475:1-5-11. Surrender of Registration in Lieu of Administrative Action [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §2-301.
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ANALYSIS:
The change to rule 475:1-1-1 updates the title "Compliance" to "Diversion". The change to rule 475:1-5-6 adds the word "not" before "unduly repetitious" to clarify the type of evidence to be presented at an administrative hearing. The change to rule 475:1-5-11 letters the paragraphs (a) and (b), corrects the spelling of "requested" in (a), and adds section (b), which addresses the utilization of the registration of another.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

475:1-1-1. Purpose

The Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) is mandated with enforcement of Title 63 of the Oklahoma Statutes. OBN Headquarters in Oklahoma City houses the administrative offices of the Bureau as well as the Registration, Education and Training Sections, Records and Communications Divisions. Agents of the Criminal Enforcement Section of OBN operate out of the regional offices as well as Oklahoma City to provide assistance to local law enforcement and enforce criminal violations involving the cultivation and distribution of illicit drugs. The ~~Compliance~~ Diversion Division focuses on OBN registrants' adherence to law and the diversion of legally manufactured controlled dangerous substances.

Subchapter 5. Administrative Actions

475:1-5-6. Submission and receipt of evidence

(a) The hearing officer may allow evidence at a hearing or pre-hearing conference that is competent, relevant, material and not unduly repetitious.

(b) Opinion testimony shall be admitted when the hearing officer is satisfied that the witness is properly qualified.

(c) Authenticity of all documents submitted in advance shall be deemed admitted unless objection thereto is filed with the hearing officer, except that a party will be permitted to challenge such authenticity at a later time upon showing of good cause for failure to have filed such written objection.

(d) Samples, if otherwise admissible into evidence, may be displayed at the hearing and may be described for purposes of the record or may be admitted into evidence as exhibits.

(e) Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded opportunity to controvert such fact.

(f) The hearing officer shall file as exhibits copies of the following documents:

(1) The order to show cause or notice of hearing.

(2) Any waiver of hearing.

(3) The prehearing ruling, if any.

(4) Any other document necessary to show the basis for the hearing.

475:1-5-11. Surrender of Registration in Lieu of Administrative Action

(a) Any registered person of the Oklahoma Bureau of Narcotics may surrender his registration in lieu of administrative action at any time before such action is taken. In such a case, the registered entity will waive the right to reapply for an OBN registration for a period of one (1) year. In such case, the OBN Director may approve or deny any application from the registrant following this one-year period based on the impact issuing the ~~requested~~ requested registration may have on the general public safety.

(b) In the event an individual practitioner's registration is revoked, suspended or surrendered, either voluntarily or following administrative action, he or she may not, at any time, utilize the registration of another individual and/or institution. Any effort to utilize the registration of another may be considered an unlawful dispensation, delivery or administering of a controlled dangerous substance as set forth under Title 63 of the Oklahoma Statutes.

[OAR Docket #12-637; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 10. REQUIREMENTS FOR REGISTRATION

[OAR Docket #12-638]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
475:10-1-2. Time and method of payment of registration fees [AMENDED]
475:10-1-3. Exemption from registration or payment of fees [AMENDED]
475:10-1-5. Exemptions of agents and employees [AMENDED]
475:10-1-9. Application for registration pursuant to Title 63 Okl.St.Ann.§2-302 [AMENDED]
475:10-1-10. Application ~~forms~~ notices for registration and re-registration [AMENDED]
475:10-1-11. Operational protocols [AMENDED]
475:10-1-15. Amendments to and withdrawal of applications [AMENDED]
475:10-1-16. Inspection [AMENDED]
475:10-1-20. Modification of registration [AMENDED]
475:10-1-21. Change of business address [AMENDED]
475:10-1-22. Termination of registration [AMENDED]

AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. §2-301, 63 O.S. §2-309H.

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INCORPORATIONS BY REFERENCE:
Incorporated standards:
Title 21 Code of Federal Regulations § 1301.22(C)(5) and (6)
Title 21 Code of Federal Regulations § 1304.04
Incorporating rules:
475:10-1-5. Exemptions of agents and employees
Availability:
The Code of Federal Regulations are continuously available to the public via the Internet. Additionally, paper copies may be viewed during business hours, by contacting Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us
ANALYSIS:
The change to rule 475:10-1-2 deletes the sentence specifying a form of payment. The change to rules 475:10-1-3 and 475:10-1-5 corrects statute references. The change to rule 475:10-1-9 adds the phrase "unless otherwise provided in this Title" for clarification. The change to rule 475:10-1-10 clarifies terms and states the responsibility of the registrant. The change to rule 475:10-1-11 corrects a spelling error. The change to rule 475:10-1-15 deletes the specification for a certain type of mailing. The change to rule 475:10-1-16 clarifies who may inspect, and clarifies statutory authority. The change to rule 475:10-1-20 deletes the written notification provision. The change to rule 475:10-1-21 clarifies the method of notification, and specifies type of day-"calendar" day. The change to rule 475:10-1-22 specifies a deadline to notify OBN of termination.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:10-1-2. Time and method of payment of registration fees

Registration and re-registration fees shall be paid at the time when the application for registration or re-registration is submitted for filing. ~~Payment should be made in the form of a personal, certified, or cashier's check or money order made payable to "Oklahoma State Bureau of Narcotics and Dangerous Drugs Control."~~

475:10-1-3. Exemption from registration or payment of fees

(a) The Director may exempt from payment of a fee for registration or re-registration any agency of the United States, the State of Oklahoma, or any political subdivision or agency thereof, which is authorized to purchase controlled dangerous substances, to obtain such substances from official stocks, to dispense or administer such substances, to conduct research, instructional activities, or chemical analysis with such substances or any combination thereof, in the course of official duties (e.g., city, county, state or governmental institutions duly licensed by appropriate state agencies).

(b) The Director may exempt from registration the following persons:

(1) Any official, employee or officer of any agency of the United States, State of Oklahoma, or political subdivision or agency thereof, who is authorized to purchase controlled dangerous substances, to obtain such substances from official stocks, to dispense or administer such substances, to conduct research, instructional activities or chemical analysis with such substances, to possess such substances or any combination thereof, in the course of his/her official duties or employment.

(2) Such persons shall be deemed agents of their respective agencies, provided that their professional handling of controlled dangerous substances are confined to the agency of their specific place of official duties or employment [e.g., practitioners limited to practice with such official agency, pharmacies or drug departments limited to dispensing of controlled dangerous substances to inpatients only of their respective institutions, registered nurses, and others as defined in 63 Okl.St.Ann.§ 2-302~~(C)~~].

475:10-1-5. Exemptions of agents and employees

The following persons shall not be required to register and may lawfully possess controlled dangerous substances in the performance of their official duties under the provisions of the Act:

(1) An agent, or employee thereof, of any registered manufacturer, distributor, dispenser or user for scientific purposes of any controlled dangerous if such agent is acting in the usual course of his/her business or employment.

(2) An individual physician who is a resident or staff physician or a registered or otherwise-authorized hospital shall not be required to register in order to administer, prescribe or dispense controlled dangerous substances in the usual course of his/her professional practice, while acting within the scope of his/her employment in the hospital, provided that:

(A) Such resident or staff physician is authorized to carry on the respective activities under the laws of the State of Oklahoma by their appropriate State of Oklahoma licensing board.

(B) The hospital by whom he/she is employed has verified that the individual physician is so licensed by the appropriate State of Oklahoma licensing board.

(C) Such administering, prescribing or dispensing is confined solely to inpatients or outpatients of the hospital by which the individual physician is employed.

(D) All prescriptions and records relating to controlled dangerous substances administered, dispensed or prescribed to inpatients or outpatients shall reflect the designated specific internal hospital code number given to each resident or staff physician so authorized by the hospital pursuant to 475:25-1-18 and Title 21 Code of Federal Regulations, § 1301.~~24~~22(C)(5) and (6).

(3) Interns of teaching hospitals shall not be required to register and may administer, dispense and prescribe controlled dangerous substances in accordance with paragraph (2) of this Section, provided that:

(A) All prescriptions issued by such interns for outpatients shall be countersigned by a physician

licensed by the physician's appropriate State of Oklahoma licensing board and shall bear such physician's personal designated hospital code number.

(B) Such intern is so authorized by the hospital and is acting only within the scope of his/her employment within the teaching hospital.

(4) An individual physician, dentist, podiatrist or veterinarian, as defined in 63 Okl.St.Ann. § 2-101~~(a)~~, who is a resident or foreign-trained, who practice is, for any reason, limited solely to federal, state or local government institutions, shall dispense, administer or prescribe controlled dangerous substances under the authority of the registration of the institutional hospital by whom he/she is employed in lieu of being registered himself/herself, provided that:

(A) Such dispensing, administering or prescribing is done in the usual course of his/her professional practice.

(B) Such individual practitioner is authorized to carry on the respective activities under the laws of the State of Oklahoma by the appropriate State of Oklahoma licensing board.

(C) The hospital or other institution by which he/she is employed has verified that the individual practitioner is so permitted to dispense, administer or prescribe drugs within the jurisdiction.

(D) Such individual practitioner is acting only within the scope of his/her employment in the hospital or institution.

(E) Records relating to controlled dangerous substances that are prescribed by such residents, foreign-trained physicians, or physicians limited to federal, state or local government institutions, shall be kept pursuant to Title 21 Code of Federal Regulations §~~1301.24(C)(5)~~1304.04 and 475:25-1-18.

(5) An individual practitioner, as defined in (4) of this Section, who is limited solely to federal, state or local government institutional practice, may obtain individual fee-exempt registration in the event that such institution by which he/she is employed does not maintain a hospital as defined by the appropriate State of Oklahoma licensing agency and is not so registered with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

(A) Such limited practitioners shall be required to maintain records of all controlled dangerous substances administered, dispensed and distributed by such practitioner.

(B) Such limited practitioners shall be authorized to dispense, administer or prescribe controlled dangerous substances in the course of their professional practice only within such institution as designated by their appropriate Oklahoma state professional licensing boards.

(C) Such limited practitioners shall be required to report to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control each change of location of institutional employment.

(D) Such limited practitioners shall be held individually responsible for safeguards, record keeping, inventories, transferring and disposing of controlled dangerous substances in accordance with this Chapter.

475:10-1-9. Application for registration pursuant to Title 63 Okl. St.Ann § 2-302

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time unless otherwise provided in this Title. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Director to such person.

(b) After any person is first registered he/she shall thereafter be required to be registered no later than the first day of November of each year.

(c) Any person who fails to register shall be in violation of the Uniform Controlled Dangerous Substances Act and subject to penalties as provided therein.

(d) Applications for registration of new principal places of business and new personal registration requests received after July 1st of each year will, if accepted for registration, be registered for the forthcoming registration year and, therefore, will not be required to pay the registration fee for the remaining four (4) months of the registration year in which application is made.

475:10-1-10. Application ~~forms~~ notices for registration and re-registration

(a) Any person required to be registered under Title 63 may obtain the appropriate registration application ~~form~~ notice by contacting the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

(b) Any person desiring to professionally handle controlled dangerous substances for the purpose of canine drug detector handling and or training, manufacturing, distributing, conducting scientific research, or performing analytical laboratory services by scientific analysis of controlled dangerous substances listed in the Uniform Controlled Dangerous Substances Act, Schedules I through V, shall apply for registration as follows:

(1) Application for registration as a canine drug detector handler and or trainer, researcher or analytical laboratory shall be required with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as an individual.

(2) Two (2) copies of the proposed operational protocol shall be attached to the application ~~form~~ notice.

(3) A detailed description, diagram, and/or photographs of all security measures proposed for the safe storage of all controlled dangerous substances shall be attached to the application ~~form~~ notice.

(c) Any place or person licensed by their appropriate State of Oklahoma licensing board who desires to professional handle controlled dangerous substances in their practice of medicine,

retail pharmacy, hospital, teaching institution, or institutional drug department shall apply for registration.

(d) ~~Registration forms~~ Renewal notices will be mailed as applicable to each registered person approximately ninety (90) days before the expiration date of October 31 of each year; if any registered person does not receive such ~~form~~ notice within thirty (30) days prior to the expiration date of his/her registration, he/she must give notice of such omission and request such ~~form~~ notice either by personal contact with, or in writing to, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. It shall be the registrant's responsibility to maintain a valid registration.

(e) Each application shall include all information called for in the ~~form~~ notice, unless the item is not applicable, in which case this fact shall be indicated, and the application ~~form~~ notice with comments shall be required to be returned to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The address of the registrant shall include the mailing address and physical directions to the registrant's location [if different from the mailing address.] A post office box will no be considered a sufficient mailing address.

(f) Each application, attachment or other document filed as a part of any application shall be signed by the applicant or by an officer or official of the applicant. Those applications with questions left unanswered or without proper signature will not be accepted.

475:10-1-11. Operational protocols

(a) An operational protocol to conduct scientific research, scientific analysis, institutional instructional activities or drug canine training with ~~control led~~ controlled dangerous substances listed in Schedules I through V shall be in the following form and contain the following information where applicable:

(1) Scientific research, analytical laboratory, institutional instructional activities, or drug canine handlers.

(A) Name, business address, and Federal Drug Enforcement Administration registration number.

(B) Institutional affiliation, if any.

(C) Qualifications, including an academic vita and an appropriate bibliography (listing publications).

(i) Applicants shall be required affirmatively to establish (by documentation or suitable references or other appropriate means) their good moral character and high ethical professional standing.

(ii) Applicants for scientific research shall possess at least an earned bachelor's degree in natural science, medicine or other appropriate field from institution(s) accredited by bodies recognized by the designated authority of the OU Health Sciences Center.

(iii) Applicants for scientific research proposing studies involving human subjects should minimally possess an earned doctorate in medicine or natural sciences or other appropriate field from accredited institution(s).

(iv) Applicants for scientific analysis (Analytical Laboratory Activities) who propose studies involving chemical analysis or other chemical, physical or biological scientific activities with Schedule I-V substances shall be required to have satisfactorily completed a minimum of thirty-two (32) semester hours, or their equivalent, of acceptable courses in chemistry, with one (1) or more accredited courses in analytical chemistry.

(v) Institutional instructional activities or institutions of higher learning requesting registration of an agent of such institution shall be an institution accredited by the Oklahoma State Regents for Higher Education, or such agent of an institution shall be required to have satisfactorily completed a minimum of thirty-two (32) semester hours, or their equivalent, of acceptable courses in chemistry from an institution(s) accredited by bodies recognized by the United States Office of Education or the United States Department of Health, Education and Welfare.

(vi) Except for drug canine handlers, all applicants shall further be required to document at least one (1) year of recent suitable, professional experience for the activities to be undertaken for a Schedule I registration. This may consist of formal participation in established and recognized analytical laboratory analysis of controlled dangerous substances, research programs, institutional instructional activities, or other evidence of appropriate background approved by the Director (post-doctoral training, applicable laboratory experience, etc.).

(2) Research project.

(A) Title of project.

(B) Statement of purpose.

(C) Name of controlled dangerous substance or substances involved and the amount of each substance for use.

(D) Description of the research to be conducted, including the number and species of research subjects, the dosage to be administered, the route and method of administration, and the duration of the project.

(E) Location where the research will be conducted.

(F) Statement of the security provisions for storing the controlled dangerous substances and for dispensing the controlled dangerous substances in order to prevent diversion.

(G) If the researcher or investigator desires to manufacture any controlled dangerous substances listed in this part, a statement of the quantity to be manufactured and the sources of the chemicals to be used.

(3) Authority.

(A) Institutional approval.

(B) Approval of Human Research Committee for human studies.

(C) Indication of an approval for new Federal Drug Enforcement Administration registration number if additional registration is required by the D.E.A.

(D) Indication of an approved funded grant (number), if any.

(4) Adequate environment and facilities. All applicants shall be required to establish that they have access to and beneficial use of an institutional (or other) environment appropriate to the type of activities contemplated, and that they possess the necessary facilities (inclusive of proper laboratory facilities and equipment, etc.). This requirement shall be interpreted as requiring that overall environment, facilities and equipment meet generally recognized standards for the activities proposed.

(5) Confidentiality of research subjects.

(A) Any person registered under the Uniform Controlled Dangerous Substances Act who intends to maintain the confidentiality of those persons who are the subjects of such research shall, pursuant to Title 63 Okl.St.Ann. § 2-106(G), upon registration or within a reasonable time thereafter, submit to the Director a separate request for each research project involving controlled dangerous substances, which shall contain the following:

(i) The researcher's registration number with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control and/or Federal Drug Enforcement Administration registration number(s) for that project.

(ii) The location of the research project.

(iii) A general description of the research or a copy of the research protocol as required in this Chapter.

(iv) A specific request to withhold the names and/or any identifying characteristics of the research subjects.

(v) The reasons supporting the request.

(B) Within thirty (30) days from the receipt of the request, the Director shall issue a letter, either granting confidentiality, requesting additional information, or denying confidentiality, in which case the reasons for the denial shall be included. A grant of confidentiality shall be limited solely to the specific research project indicated in the request.

(b) Within thirty (30) days after the date of completion of the research project, the researcher shall so notify the Director.

475:10-1-15. Amendments to and withdrawal of applications

(a) An application may be amended or withdrawn without permission of the Director at any time before the date on which the applicant receives an order to show cause why the registration should not be denied, revoked or suspended pursuant to Title 63 Okl.St.Ann. § 2-305. An application may be amended with permission of the Director at any time where good cause is shown by the applicant or where the amendment is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application ~~when sent by registered or certified mail, return receipt requested,~~ shall be deemed to be a withdrawal of the application.

475:10-1-16. Inspection

The Director, his or her agents, as well as specifically designated or assigned state, county and municipal officers whose duty it is to enforce the laws of this State relating to controlled dangerous substances may inspect, or cause to be inspected, the establishment of an applicant or registrant pursuant to ~~Title 63 Okl.St.Ann. § 2-502~~ this Title and the provisions of Title 63 of the Oklahoma Statutes.

475:10-1-20. Modification of registration

Any registrant may apply to modify his/her registration to authorize the handling of additional controlled dangerous substances by submitting a letter of request to the Registration Division of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control. The letter shall contain the registrant's name, address, state and federal registration numbers as printed on the registrant's State of Oklahoma and Federal Certificates of Registration, and the substances and/or schedules to be added to his/her registration, and shall be signed by the registrant. If the registrant is seeking to handle additional controlled dangerous substances listed in Schedule I of the Uniform Controlled Dangerous Substances Act for the purpose of chemical analysis for scientific purposes, scientific research, or instructional activities, he/she shall attach two (2) copies of his/her protocol describing each anticipated activity involved with the additional substances or, in the event of instructional activities, a statement describing the nature, extent and duration or such instructional activity, as appropriate. No fee shall be required to be paid for the modification. ~~If the modification in the registration is approved, the Director shall provide written modification to the registrant, who shall maintain the notification with the current Certification of Registration until expiration.~~

475:10-1-21. Change of business address

The registrant shall notify the Registration Division of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control in writing, sent via U.S. certified mail, return receipt requested, or through the registrant's online account, within fourteen (14) calendar days of any change of their business (mailing or physical) address.

475:10-1-22. Termination of registration

The registration of any person shall terminate if and when such person dies, ceases legal existence, or discontinues business or professional practice including, but not limited to, full retirement. Any registrant who discontinues business or professional practice shall notify the Director ~~promptly~~ within fourteen (14) calendar days of such fact.

[OAR Docket #12-638; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 15. IMMINENT DANGER SUSPENSION

[OAR Docket #12-639]

RULEMAKING ACTION:
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RULES:
475:15-1-2. Immediate suspension of registration [AMENDED]
475:15-1-3. Hearing following immediate suspension [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. § 2-301.
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n/a
ANALYSIS:
The change to rule 475:15-1-2 adds language regarding a new violation while serving term of probation. The change to rule 475:15-1-3 clarifies that a hearing may be waived.
CONTACT PERSON:
Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:15-1-2. Immediate suspension of registration

If the Director finds there is imminent danger to the public health or safety, he/she may immediately suspend any registration simultaneously with the institution of show cause proceedings.

(1) Method. The registrant shall be notified of such suspension through an imminent danger letter signed by the Director.

(2) Notice and surrender of controlled dangerous substances. The imminent danger letter shall be personally served on the registrant by an Agent of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control at which time the registrant shall be required to surrender to the Agent all controlled dangerous substances in his/her possession. In the event the registrant cannot be located by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Agent, the Agent shall deliver the imminent danger letter to the address listed on the registrant's most current registration application on file with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control at which time the Agent shall take possession of all controlled dangerous substances located at such address.

(3) Additional violations. Where there is a reasonable belief that a registrant has committed a new violation of OBN's rules or applicable law while serving a term of probation with OBN, the registrant's OBN registration may be immediately suspended until a hearing can be had, which shall be within fourteen (14) calendar days, unless otherwise agreed to by the parties.

475:15-1-3. Hearing following immediate suspension

A show cause hearing shall be held within fourteen (14) calendar days, unless waived by the parties, following the suspension of a registration suspended without a hearing.

[OAR Docket #12-639; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 20. SECURITY REQUIREMENTS

[OAR Docket #12-640]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:20-1-5. Other security controls for nonpractitioner registrants [AMENDED]
475:20-1-7. Physical security controls for drug canine handlers [AMENDED]
475:20-1-8. Other security controls for registrants [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. § 2-301.
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ANALYSIS:
The change to rule 475:20-1-5 deletes certain requirements regarding the distribution of samples, and clarifies the list of persons to not employ in controlled dangerous substance related jobs. The change to rule 475:20-1-7 corrects a spelling error. The change to rule 475:20-1-8 specifies "immediate" notification.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:20-1-5. Other security controls for nonpractitioner registrants

(a) Before distributing a controlled dangerous substance to any person whom the registrant does not know to be registered to possess the controlled dangerous substance, the registrant shall make a good-faith inquiry either with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or with the Drug Enforcement Administration to determine that the person is registered to possess the controlled substance.

(b) The registrant shall design and operate a system to disclose to the registrant suspicious orders of controlled dangerous substances. The registrant shall inform the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of suspicious orders when discovered by the registrant. Suspicious orders include orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.

(c) All registrants shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of any theft or significant loss of any controlled dangerous substances upon discovery of such theft or loss. Notification shall be made in writing and shall contain a list of the substances stolen or diverted by their trade name, quantities, descriptions, amount lost or stolen, and any cost code marks utilized. Thefts must be reported whether or not the controlled dangerous substances are subsequently recovered and/or the responsible parties are identified and action taken against them.

(d) No person acting as an agent of a registered controlled dangerous substances manufacturer or distributor (i.e., detailman, salesman, etc.) shall distribute samples of controlled dangerous substances to a practitioner without first having been registered (no fee required) with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

~~(1) Each person may distribute such samples of controlled dangerous substances only after simultaneously preparing a specific written list of the items to be distributed on forms purchases (at cost of printing) from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

~~(2) Forms provided by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be prepared in triplicate, listing the controlled dangerous substances to be distributed, shall be signed by the company representative distributing the samples, shall denote the registration number assigned to the company in the C.O.D. blank of the form, signed by the practitioner receiving the samples, and shall denote the practitioner's registration number issued by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.~~

~~(3) From the completed forms, the original shall be forwarded to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control on the first (1st) and fifteenth (15th) of each month. One (1) copy of the completed form will be left with the practitioner and shall be retained by the practitioner as a permanent record for a period of two (2) years. The remaining copy of the completed form shall be retained by the company representative and become a part of the company's permanent records.~~

(e) When shipping controlled dangerous substances, a registrant is responsible for selecting common or contract carriers which provide adequate security to guard against in-transit losses. When storing controlled dangerous substances in a public warehouse, a registrant is responsible for selecting a warehouseman which will provide adequate security to guard against storage losses; wherever possible, the registrant shall store controlled dangerous substances in a public warehouse which complies with the requirements set forth in this Chapter. In addition, the registrant shall employ precautions (e.g., assuring that shipping containers do not indicate that contents are controlled dangerous substances) to guard against storage or in-transit losses and comply with all current Federal regulations. Reporting the loss of in-transit shipments is the responsibility of the registrant shipping the controlled dangerous substances.

(f) When distributing controlled dangerous substances through agents (e.g., detailmen), a registrant is responsible for providing and requiring adequate security to guard against theft and diversion while the controlled dangerous substances are being stored or handled by the agent(s).

(g) No registrant shall knowingly employ as an agent or employee any person who will have access to controlled dangerous substances if such person has been convicted, pled guilty or nolo contendere or otherwise ordered to complete a period of probation or supervision for~~of~~ a misdemeanor or felony relating to any controlled dangerous substances as defined by the Uniform Controlled Dangerous Substances Act in this state, any other state, or the United States, or any person convicted, pled guilty or nolo contendere or otherwise ordered to complete a period of probation or supervision for~~of~~ any felony of this state, any other state, or the United States, unless, after full review of the circumstances, the Director waives this requirement in writing with respect to each person on a case-by-case basis.

(h) The registrant shall immediately notify OBN and seek authorization to employ any individual ~~that has been convicted or is serving a deferred or probationary sentence related to any controlled dangerous substance as defined by the Uniform Controlled Dangerous Substances Act in this state, any other state, or the United States~~ as specified above.

475:20-1-7. Physical security controls for drug canine handlers

Physical security controls for drug canine handlers shall be as follows:

(1) Controlled dangerous substances stored at a registration location shall be in a securely locked, substantially constructed cabinet and/or may be stored in a ~~safety~~ safe deposit box maintained by a financial institution.

(2) Controlled dangerous substances transported in a vehicle must be maintained in a locked container inside the vehicle.

475:20-1-8. Other security controls for registrants

(a) All registrants shall immediately notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control of any theft or significant loss of any state or federal registration certificates, D.E.A. Form 222 order blanks, prescription blanks or other materials used in purchasing, distributing, prescribing or transferring controlled dangerous substances.

(b) All registrants shall immediately notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or the local law enforcement agency having jurisdiction of any information the registrant receives concerning any violations of the Oklahoma Controlled Dangerous Substances Act and/or federal statutes and regulations related to controlled dangerous substances.

[OAR Docket #12-640; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 25. RECORDS AND REPORTS OF REGISTRANTS

[OAR Docket #12-641]

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PERMANENT final adoption
RULES:
475:25-1-7. Biennial inventory date [AMENDED]
475:25-1-9. Inventories of manufacturers [AMENDED]
475:25-1-10. Inventories of distributors [AMENDED]
475:25-1-12. Inventories of scientific analyst [AMENDED]
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The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. § 2-301.
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475:25-1-9. Physical security controls for drug canine handlers
475:25-1-10. Inventories of distributors
475:25-1-12. Inventories of scientific analyst
Availability:
The Code of Federal Regulations are continuously available to the public via the Internet. Additionally, paper copies may be viewed during business hours, by contacting Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us
ANALYSIS:
The change to rule 475:25-1-7 deletes a non-existing rule reference. The changes to rules 475:25-1-9, 475:25-1-10, and 475:25-1-12 updates Code of Federal Regulations references.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:25-1-7. Biennial inventory date

Every two (2) years following the date on which the initial inventory is taken by a registrant ~~pursuant to 475:25-1-6~~, the registrant shall take a new inventory of all stocks of controlled dangerous substances on hand. The biennial inventory may be taken:

(1) on the day of the year on which the initial inventory was taken; or

(2) on the registrant's regular general physical inventory date, as long as the date chosen does not exceed two (2) years from the last inventory date.

475:25-1-9. Inventories of manufacturers

Inventories of manufacturers of controlled dangerous substances shall conform to Title 21 Code of Federal Regulations, §~~1304.15~~1304.11.

475:25-1-10. Inventories of distributors

Each person registered or otherwise authorized to distribute controlled dangerous substances shall include in his/her inventory the same information required of a manufacturer pursuant to Title 21 Code of Federal Regulations, §~~1304.16~~1304.11.

475:25-1-12. Inventories of scientific analyst

Inventories of each person registered or otherwise authorized to conduct scientific analysis with controlled dangerous substances shall conform to Title 21 Code of Federal Regulations, §~~1304.27~~1304.11.

[OAR Docket #12-641; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 30. LABELING REQUIREMENTS

[OAR Docket #12-642]

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RULES:
475:30-1-4. Manner of issuance of prescriptions [AMENDED]
475:30-1-6. Requirements of prescriptions for controlled dangerous substances listed in Schedule II [AMENDED]
475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV [AMENDED]
475:30-1-11. Refilling of prescriptions [AMENDED]
475:30-1-15. Identification requirement [AMENDED]
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Incorporated standards:
Title 21 Code of Federal Regulations § 1311 et. seq.
535:15-3-21. Prescription fill, refill and partial fill records and reports
Incorporating rules:
75:30-1-4. Manner of issuance of prescriptions
475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV
475:30-1-11. Refilling of prescriptions
Availability:
The Code of Federal Regulations and the Rules of the Oklahoma State Board of Pharmacy are continuously available to the public via the Internet. Additionally, paper copies may be viewed during business hours, by contacting Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us
ANALYSIS:
The changes to rules 475:30-1-4, 475:30-1-6 and 475:30-1-10 allows for electronic prescriptions as provided by the Code of Federal Regulations. The change to rule 475:30-1-11 requires refill history to be maintained by the pharmacy, and adds a rule reference. The change to rule 475:30-1-15 requires a 'valid' form of identification.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:30-1-4. Manner of issuance of prescriptions

(a) The practitioner shall sign a written prescription in the same manner as he/she would sign a check or legal document and shall also type, stamp or print the practitioner's name on the face of each prescription. Where an oral order is not permitted, prescriptions shall be written with ink. All written prescriptions shall be manually signed by the practitioner. The prescriptions may be prepared by an agent for the signature of a practitioner, but the prescribing practitioner is responsible in the event the prescription does not conform in all essential respects to the Uniform Controlled Dangerous Substances Act and this Chapter. ~~Electronic prescriptions for schedule III, IV, or V drugs containing an electronic or computer generated signature shall be treated as a call-in prescription as described in 475:30-1-10.~~

(b) A resident or staff practitioner, an intern of a teaching hospital, or a limited institutional practitioner of a federal, state or local government hospital or institution, exempted from registration or registered in fee-exempt status with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, shall include on all prescriptions issued by him/her the hospital or institutional Federal Drug Enforcement Administration registration number with the special internal code number assigned by the hospital or other institution; or include on all prescriptions he/she issues his/her personal Federal Drug Enforcement Administration registration number. Such prescriptions issued by interns of a teaching hospital, if for outpatients, must be countersigned by a practitioner licensed by the practitioner's appropriate State of Oklahoma licensing board.

(c) A practitioner must state on a written prescription for any controlled dangerous substance the name, address and Federal Drug Enforcement Administration registration number of the practitioner; the date of delivery of the prescription; the name, dosage and strength per dosage unit of the controlled dangerous substance; the name and address of the patient, or if it is a veterinary prescription, the species of the animal and the

name and address of the owner; the directions for use and any cautionary statements required; and if allowable, the number of times to be refilled.

(1) The face of a prescription must not be materially altered; if an error is made in filling out the prescription, a new prescription must be written by the prescribing practitioner.

(A) A pharmacist may add to the prescription the patient's address or age, the prescribing practitioner's federal DEA number, or the generic drug name if used.

(B) After confirming with the prescribing practitioner, the pharmacist may add information indicating the strength, whether tablet or capsule form, and whether it is compounded if such additions would not materially alter the prescription.

(C) If omitted, the directions (Sig) or the quantity, may be added by the pharmacist after confirming with the prescribing practitioner.

(D) Documentation of contacting the prescribing practitioner will be noted on the back of the prescription regarding (B) and (C) above.

(2) A written prescription for a controlled dangerous substance in Schedule II becomes invalid thirty (30) days after the date of issuance, with day one (1) of the thirty (30) day period being the first day after the date of issuance.

(3) Each scheduled drug shall be written on a single prescription form, and no other prescriptions (controlled or non-controlled) shall be written on the same prescription form.

(d) Upon receiving an oral prescription, the pharmacist must reduce the oral prescription to the form specified in (c) of this Section, including the typewritten name of the prescribing practitioner. The pharmacist filling any prescription for any controlled dangerous substance must enter the date of filling and handwrite the initials of the pharmacist on the prescription. If the practitioner is not known to the pharmacist, he/she must make a reasonable effort to determine that the oral authorization came from a registered practitioner.

(e) Upon receiving an oral prescription, the pharmacist may use a computer printout label if the label meets all requirements for a prescription as set out by the Uniform Controlled Dangerous Substances Act and this Chapter. On computer labeling for oral prescriptions, it is not necessary that the Drug Enforcement Administration registration number be on the label used as an oral prescription, but it must be recorded on the document prepared by the pharmacist.

(f) Written prescriptions may be transmitted by a practitioner to a dispensing pharmacy by facsimile. In such cases, the prescribing practitioner shall print "FAXED" on the face of the prescription, and the facsimile received must be on non-fading standard paper. Thermographic paper is not acceptable for any prescriptions for drugs in any Schedule.

(1) For drugs in Schedules III and IV, a facsimile of a written, signed prescription transmitted directly by the prescribing practitioner to the pharmacy can serve as an original prescription.

(2) For drugs in Schedule II, the original written prescription must still be presented and verified against the facsimile at the time the substance is actually dispensed and the original document must be properly annotated and retained for filing subject to the exceptions listed in (3) below.

(3) Exception to (2): A facsimile copy of a prescription for a Schedule II drug when sent by facsimile by the prescribing practitioner:

(A) To a Home Infusion Pharmacy.

(B) When the prescription is for a patient in a Long Term Care Facility.

(C) When the prescription is for a patient in a Hospice program certified by Medicare under Title XVIII or licensed by the state.

(D) If the facsimile is sent from a LTCF or hospice instead of the prescribing practitioner's office, the original must be presented at the time any CDS is dispensed.

(g) The pharmacist still bears the responsibility for ensuring that prescriptions for controlled substances have been issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his/her professional practice. This responsibility applies equally to an order transmitted by facsimile. Measures to be considered in authenticating prescriptions sent by facsimile equipment would include maintenance of a practitioner's facsimile number reference file, verification of the telephone number of the originating facsimile equipment and/or telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's agent.

(h) Electronic prescriptions are permitted as provided by 21 CFR §§ 1311 et. seq.

475:30-1-6. Requirements of prescriptions for controlled dangerous substances listed in Schedule II

(a) A pharmacy may dispense directly a controlled dangerous substance listed in Schedule II which is a prescription drug as determined under the Uniform Controlled Dangerous Substances Act, only pursuant to a written prescription ~~signed by the prescribing registered individual practitioner, except as provided in (d) of this Section~~or as otherwise provided for in this Title.

(b) A registered individual practitioner may administer or dispense directly a controlled dangerous substance listed in Schedule II in the course of his/her professional practice without a prescription, subject to 475:30-1-5.

(c) An institutional physician limited in practice by the individual's appropriate Oklahoma state licensing board, other than those registered in a fee-exempt status with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, may administer or dispense directly (but not prescribe) a controlled dangerous substance listed in Schedule II, only pursuant to a written prescription signed by the "Limited Institutional Practitioner's" supervising chief medical practitioner or to an order for medication made by an individual supervising

chief medical practitioner which is dispensed for immediate administration to the ultimate user.

(d) In case of an emergency situation, as defined by the Oklahoma State Board of Pharmacy pursuant to Title 63 Okl.St.Ann. § 2-309, and Title 21 Code of Federal Regulations, § 1306.11, the pharmacist of a registered or otherwise authorized pharmacy may dispense a controlled dangerous substance listed in Schedule II upon receiving oral authorization of a prescribing registered individual; PROVIDED that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing registered individual practitioner).

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in Title 63 Okl.St.Ann. § 2-309 and OAC 475, except for the signature of the prescribing registered individual practitioner.

(3) If the prescribing registered individual practitioner is not known to the pharmacist, he/she must make a reasonable effort to determine that oral authorization came from a registered individual practitioner, which may include a callback to the prescribing registered individual practitioner, using his/her phone number as listed in the telephone directory and/or good faith effort to insure his/her identity.

(4) In emergency situations, reasonable effort must be made to determine the identity of the person picking up the prescription if that person is not known to the pharmacist.

(5) Within seventy-two (72) hours after authorizing an emergency oral prescription, the prescribing registered individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of Title 63 Okl.St.Ann. § 2-309(F), the prescription shall have written on its face "Authorization for Emergency Dispensing", and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail, it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacy shall notify the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control if the prescribing registered individual practitioner fails to deliver to him/her a written prescription; failure of the pharmacy to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing registered individual practitioner.

475:30-1-10. Requirements of prescriptions for controlled dangerous substances listed in Schedules III and IV

(a) A pharmacy may dispense controlled dangerous substances listed in Schedules III or IV only pursuant to either a written prescription signed by a registered or otherwise authorized individual practitioner, ~~or~~ an oral prescription made by a prescribing registered or otherwise authorized individual practitioner and promptly reduced to writing by the pharmacist, containing all the information required by Title 63 Okl.St.Ann.§ § 2-309 and 2-314, and this Chapter, or pursuant to an electronic prescription in compliance with the terms of 21 CFR §§ 1311 et. seq. Computer labels meeting these requirements are acceptable.

(b) A registered or otherwise authorized individual practitioner may administer or dispense directly a controlled dangerous substance listed in Schedule III or IV in the course of his/her professional practice without a prescription, subject to 475:30-1-5.

(c) An institutional practitioner limited in practice by the individual's appropriate State of Oklahoma professional licensing board, other than those registered as fee-exempt by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, may administer or dispense directly (but not prescribe) a controlled dangerous substance listed in Schedule III or IV pursuant to a written prescription signed by the "Limited Institutional Practitioner's" supervising chief medical practitioner, or pursuant to oral prescription made by the "Limited Institutional Practitioner's" supervising chief medical practitioner and promptly reduced to writing by the pharmacist containing all information required by 475:30-1-4, except for the signature of the "Limited Institutional Practitioner's" supervising chief medical practitioner or pursuant to an order for medication made by an individual supervising chief medical practitioner which is dispensed for immediate administration to the ultimate user, subject to 475:30-1-5.

475:30-1-11. Refilling of prescriptions

(a) No prescription for a controlled dangerous substance in Schedules III or IV shall be filled or refilled more than six (6) months after the date such prescription was issued, and no such prescription authorized to be refilled may be refilled more than five (5) times. Each refilling of a prescription shall be ~~entered on the back of the prescription~~ maintained by the pharmacy, which indicated by the number of the prescription the following information: the name and dosage form of the controlled dangerous substance; the date of each refilling; the quantity dispensed; the identity or initials of the dispensing pharmacist in each refilling; and the total number of refills for that prescription. If the pharmacist merely initials and dates the back of the prescription, he/she shall be deemed to have dispensed a refill for the full face amount of the prescription. Additional quantities of controlled dangerous substances listed in Schedule III or IV may only be authorized by a prescribing practitioner through issuance of a new and separate prescription. Refills shall not be obtained at the same time as the initial filling of the prescription and only one (1) refill shall be obtained at any one time. A new prescription for a specific CDS voids any existing refills or other prescriptions for the same drug.

(b) A pharmacy registrant may elect to use an automated data processing system to maintain prescription files; however, if such a system is used, there must also be written files kept which meet the requirements of Title 59 Okl.St.Ann. § 353.20, OAC 535:15-3-21 and 21 CFR § 1306.22.

475:30-1-15. Identification requirement

Pharmacists are required to obtain ~~positive~~ valid identification as required by Title 63 § 2-309C if they are unsure of the identity of a person picking up a prescription for any controlled dangerous substance.

[OAR Docket #12-642; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 45. OKLAHOMA CONTROL REPORTING REQUIREMENTS

[OAR Docket #12-643]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:45-1-1. Purpose [AMENDED]
475:45-1-2. Required reporting of certain information [AMENDED]
475:45-1-3. Method of reporting [AMENDED]
475:45-1-4. Waiver of ~~UCF~~electronic submissions [AMENDED]
475:45-1-5. Time limit for reporting [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. § 2-309H.
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The change to rule 475:45-1-1 adds a reporting requirement for schedule V prescriptions. The change to rule 475:45-1-2 adds a reporting requirement for schedule V, and includes a reporting requirement for a recipient's agent's information as well as the recipient's information. The change to rule 475:45-1-3 deletes outdated devices from the reporting methods. The change to rule 475:45-1-4 changes the heading, adds a reporting requirement for schedule V, allows for submission in paper format if hardship, and changes the time for review of hardship. The change to rule 475:45-1-5 changes the time for reporting to aline with statute.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:45-1-1. Purpose

The rules of this Chapter delineate the requirement of pharmacies or dispensing (but not administering) practitioners to report certain information upon filling any prescription for any controlled dangerous substance in schedules II, III, ~~or~~ IV or V.

475:45-1-2. Required reporting of certain information

(a) Every pharmacy or dispensing practitioner filling any schedule II, III, ~~or~~ IV or V prescriptions must report the following information to a central repository maintained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN). The information must include, but not be limited to, the following:

(1) Recipient's name;
(2) Recipient's identification number;
(3) National Drug Code number of the substance dispensed;
(4) Date of the dispensation;
(5) Quantity of the substance dispensed;
(6) Prescriber's U.S. Drug Enforcement Administration registration number; and
(7) Dispenser's registration number and location.

(b) The term 'recipient' is also intended to include reporting the required information concerning the recipient's agent as defined by 63 O.S. § 2-309B.

475:45-1-3. Method of reporting

Each pharmacy or dispensing practitioner must transmit the information required in 475:45-1-2 in the following manner: on an electronic device which is compatible with the receiving device of the central repository ~~or by computer diskette, magnetic tape, or other electronic medium~~.

475:45-1-4. Waiver of ~~UCF~~ electronic submissions

(a) The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) may waive the requirement to submit prescription data in an electronic format, and allow a pharmacy filling a prescription of a Schedule II, III, ~~or IV~~or V controlled dangerous substance to submit prescription data ~~on Universal Claim Forms~~ in a paper format if the dispenser has an appropriate hardship.

(b) A formal request for this waiver must be made in writing to the Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBN) and must clearly state (1) the nature and extent of the hardship; and, (2) a proposed time-line for the waiver.

(c) Any such hardship granted by the Director of OBN will be reviewed ~~annually~~ every thirty (30) days following the

granting of a waiver to determine whether or not the hardship will be extended.

475:45-1-5. Time limit for reporting

The information required by this section must be reported to the central repository within ~~thirty (30) days~~ five (5) minutes of the time that the controlled dangerous substance was dispensed.

[OAR Docket #12-643; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 50. ANIMAL CONTROL OFFICERS

[OAR Docket #12-644]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:50-1-4. Special Conditions on Ordering Controlled Substances [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S. § 2-301.
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
The change to rule 475:50-1-4 deletes an unnecessary parenthetical comment.
CONTACT PERSON:
Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:50-1-4. Special Conditions on Ordering Controlled Substances

(a) Animal control officers, although allowed to order controlled substances, shall only be permitted to do so on official city, county, state, or federal purchase orders or through credit card transactions on government-issued credit cards, and all orders shall be shipped only to the city, county, state, or federal facility. Under no circumstances shall an animal control officer be allowed to order controlled dangerous substances and cause them to be shipped to a residence, post office box (unless exempted by OBNDDC), or any other location except the official government location. The animal control officer ordering controlled substances shall not also be the direct receiver of the controlled substances, but shall arrange to have the controlled substances delivered to their supervisor or other person in their chain of command.

(b) Animal control officers are subject to any other restrictions, procedures, or policies established by their employing cities, counties, or the state that are not in direct conflict with the state law statute or OBNDDC regulations. ~~(John, this is suggested for those governments that want to create tougher guidelines if they deem necessary).~~

[OAR Docket #12-644; filed 5-16-12]

TITLE 475. OKLAHOMA STATE BUREAU OF NARCOTICS AND DANGEROUS DRUGS CONTROL
CHAPTER 55. PSEUDOEPHEDRINE CONTROL

[OAR Docket #12-645]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
475:55-1-2. Characteristics of exempt pseudoephedrine products [AMENDED]
475:55-1-5. Electronic Reporting [AMENDED]
AUTHORITY:
The Director of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, 63 O.S.§§ 2-301, 2-309H.
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SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

The change to rule 475:55-1-2 deletes the exemption of prescription pseudoephedrine products from schedule V. The change to rule 475:55-1-5 adds a requirement to check the Methamphetamine Registry before selling pseudoephedrine products, deletes the parenthetical listing certain forms of identification, adds a date of birth identifier, changes the time-out period, and adds a provision for handling sales when inaccurate information is reported.

CONTACT PERSON:

Marie Schuble, Staff Attorney, Oklahoma Bureau of Narcotics and Dangerous Drugs Control, 440 NE 39th Street, Oklahoma City, OK 73105, 405-521-2885, mschuble@obn.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

475:55-1-2. Characteristics of exempt pseudoephedrine products

(a) All products that are either: (1) soft gelatin liquid-filled capsules; or, (2) liquid preparations, are exempt from Schedule V. Conversely, all solid dosage forms of medications, including powders, that contain any quantity of pseudoephedrine are classified as Schedule V controlled dangerous substances and are subject to the rules of this section.

(b) The term "gel capsule," as specified in O.S. Title 63, means any soft gelatin liquid-filled capsule that contains a liquid suspension, which, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturers' labeling, a gelatin-covered solid does not constitute a "gel capsule" under this provision.

(c) The term "active ingredient," as specified in O.S. Title 63, shall include the matrix of glycerin, polyethylene glycol, and propylene glycol that is found in liquid capsules.

(d) Nothing in this section shall exempt from Schedule V status any liquid preparation that is found in an illegal laboratory, is associated with an illegal laboratory, or is in any form other than that manufactured and sold by a registered manufacturer for medicinal purposes.

~~(e) Products containing pseudoephedrine that are dispensed pursuant to a valid prescription by a registrant are exempt from classification as Schedule V. As such, these are not restricted to the limitations of five (5) refills within a six (6) month period instead, they are regulated the same as any non-scheduled prescription drug. Any product that is dispensed by prescription must be kept in a container that is supplied by the pharmacy and must be labeled in a manner consistent with any other prescription.~~

475:55-1-5. Electronic Reporting

Pharmacists or other authorized persons who sell Schedule V pseudoephedrine products shall exercise reasonable care in assuring that the purchaser has not exceeded the nine (9) gram limit for a thirty (30) day period. The pharmacist or other authorized person must utilize the real-time electronic pseudoephedrine tracking system and the Methamphetamine Registry as set forth pursuant to 63 O.S. § 2-701, which are established and maintained by the Oklahoma Bureau of Narcotics and Dangerous Drugs Control. The following provisions are necessary for compliance with this system:

(1) All pseudoephedrine transactions regulated by Oklahoma law must be approved through submitting the request to the electronic log and Methamphetamine Registry;

(2) Pseudoephedrine products regulated by Oklahoma law will only be sold to customers who present a valid form of identification~~, which shall be a valid state driver's license or valid state identification card~~;

(3) The customer information must be the same as that on the presented identification, and shall include the following information (fields that are required for submitting information as required by Oklahoma law):

(A) Pharmacy identification;

(B) Identification number ~~(either the driver's license number or the state issued identification number)~~;

(C) Last name;

(D) First name;

(E) Purchase quantity (in grams);

(F) Initials of the pharmacist or other authorized person conducting the transaction;

(G) Product name;

(H) Form of pseudoephedrine if it is liquid or gel-caps;

(I) Customer's street address;

(J) Customer's current city, state, and zip code; and

(K) Date of birth.

(4) If the electronic log is unavailable (time-out of ~~twenty~~ thirty (30) seconds or more) because of a failure on the Oklahoma Bureau of Narcotics and Dangerous Drugs Control network, the pharmacist or other authorized person may continue with the transactions until the system is available; if the electronic log is unavailable because of a failure attributable to systems other than the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, all transactions must be recorded manually and entered into the electronic logbook by the registrant as soon as is practicable after the problem is resolved.

(5) If at any time a pharmacist or other authorized person discovers that the information submitted to the electronic log is inaccurate, the authorized person may continue regulated transactions for twenty-four (24) hours, provided that all sales are manually recorded. The authorized person shall suspend all sales if the reporting problem is not corrected within twenty-four (24) hours of discovery. Regulated sales may be resumed only when the reporting problem is corrected and all manually recorded sales are correctly submitted to the electronic log.

[OAR Docket #12-645; filed 5-16-12]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FORLONG TERM CARE ADMINISTRATORS
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-713]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
490:1-1-1.Purpose [AMENDED]
490:1-1-2. Definitions [AMENDED]
Subchapter 3. Oklahoma State Board of Examiners for Long Term Care Administrators
490:1-3-1. Organization [AMENDED]
490:1-3-2. Officers and committees [AMENDED]
Subchapter 5. Investigative Procedures
490:1-5-2. Receipt of complaints referrals and reports [AMENDED]
490:1-5-2.1. Receipt of Action on referrals or and reports [AMENDED]
490:1-5-3. Complaints: investigations and investigative reports [AMENDED]
490:1-5-6. Notice [NEW]
490:1-5-7. Hearing [AMENDED]
490:1-5-7.1. Administrative fines [AMENDED]
490:1-5-8. Reporting [AMENDED]
Subchapter 6. Administrator Registry
490:1-6-1. General provisions [REVOKED]
Subchapter 9. Continuing education
490:1-9-1. General provisions for continuing education programs [AMENDED]
490:1-9-2. Criteria for continuing education program [AMENDED]
490:1-9-3. Approval of continuing education Programsprograms [AMENDED]
490:1-9-4. Continuing education requirements [AMENDED]
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Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.
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ANALYSIS:
The purpose of the rules changes was to update the requirements for long term care administrators in Oklahoma, primarily to include additional administrator types added to the purview of this Board (OSBELTCA) and to make proper allowances for their licensure by this Board, pursuant to recent statutory changes and under the authority of those statutory changes by the newly appointed Board. This required the addition of more terms to be defined or re-defined, detailing requirements for licensure for these new types of administrators and generally correcting terminology within the rules to reflect these changes. Additionally, there were other minor issues corrected to include the renewal of certified assistant administrators annually and requiring these same individuals to accomplish continuing education as a condition of employment. Likewise, the penalty for failure to accomplish continuing education, for all administrator types, was codified. The totality of these rules changes encompass Chapters 1, 10 and 15 (and a portion of Chapter 1 was approved separately by HJR1111).
CONTACT PERSON:
Gaylord Z. Thomas Director, Oklahoma State Board of Examiners for Long Term Care Administrators, 2401 N.W. 23rd Street, Suite 62, Oklahoma City, OK 73107, (405) 522-1616, email: gz. thomas@osbeltca.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

490:1-1-1. Purpose

This Chapter has been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. Sections 301 et seq. This Board, known as the Oklahoma State Board of Examiners for Long Term Care Administrators ("OSBELTCA"), carries out statutory authority for developing, imposing and enforcing standards that must be met by individuals in order for them to receive, maintain, or renew a long term care administrator's license/certification. These rules are written to execute the aforementioned statutory responsibilities for licensing and/or certifying administrators ~~serving in the following facility types:~~named in Title 63 Oklahoma Statutes, Chapter 12, "Oklahoma State Board of Examiners for Long Term Care Administrators" §§ 330.51 - 330.65.

~~(1) Nursing facilities and specialized facilities licensed pursuant to 63 O.S. Section 1-1901 et seq., including but not limited to specialized facilities for persons with mental retardation, developmental disabilities or Alzheimer's disease; and~~

~~(2) The nursing care service of a continuum of care facility licensed pursuant to 63 O.S. Section 1-890.1 et seq.~~

490:1-1-2. Definitions

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

"Accredited college or university" means a college or university that is domiciled within the United States and that is accredited by: the North Central Association of Colleges and Schools, The Higher Learning Commission; the Southern Association of Colleges and Schools, Commission on Colleges; the Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities; the New England Association of Schools and Colleges, Commission on Institutions of Higher Education; the Middle States Association of Colleges and Schools, Middle States Commission on Higher Education; or the Northwest Commission on Colleges and Universities.

"Administrator-In-Training" or "AIT" means: an individual serving a Board-approved internship within ~~a nursing facility or specialized facility~~the facility type for which he is seeking licensure/certification under the supervision of a preceptor 'certified' by the Board. Individuals serving an AIT internship may also be referred to herein as 'intern/trainee'.

"Administrator" means any individual duly licensed or certified by the Board regardless of the role or function he~~/she~~ performs.

"Adult Day Care (ADC) Administrator" means a long term care administrator (or director) duly licensed by the Board to serve in this capacity in an Adult Day Care Center. The scope of practice of an individual licensed as an Adult Day Care Administrator is limited to a licensed Adult Day Care Center.

"Adult Day Care (ADC) Center" shall have the same meaning as such term is defined in the Adult Day Care Act, Title 63 O.S. Section 1-870 et seq.

"Adverse action" means revocation or suspension of a license, reprimand, censure or probation; any other loss of or restriction placed upon the license, including, but not limited to, the right to apply for, or renew a license; voluntary surrender in lieu of discipline, non-renewal (excluding nonrenewal due to non-payment of fees, or retirement~~, or change to inactive status~~); administrative fines and any other negative action or finding by the Board.

"Assistant Administrator" as used herein means an individual who has been 'certified' by the Board as having met the minimum qualifications established by the Board to be able to serve as a full-time, Assistant Administrator in a licensed long term care nursing facility, and who acts under the direction, supervision and license of a licensed administrator who is the "Administrator-of-Record" at two-or-more licensed facilities which are located within a 50-mile radius of each other and wherein the total occupied bed count does not exceed 120 beds.

"Assisted Living Center" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq. Also known as an Assisted Living Facility (ALF).

"Board" means the Oklahoma State Board of Examiners for Long Term Care Administrators (OSBELTCA) or its staff.

"Certification" contextually, prior to the effective date of these rules, means the authorization granting a person the privilege of serving as a long term care administrator and continues until licensed in accordance with these rules or until October 1, 2012, whichever occurs first. The exception is the certified assistant administrator which this Board continues to certify. Certification after the effective date of these rules pertains to the completion of training at an approved institution of higher learning or other body conducting such training (except Administrator University for Nursing Home Administrators and Board conducted training for Adult Day Care administrators). The institution or body certifies that the individual has been properly and completely trained and is prepared, as a prerequisite, for the state standards exam and/or NAB RC/AL exam. Certification of training is a step in the licensure process for RC/AL licensure.

~~**"Coerce"** means to compel, pressure or otherwise improperly influence the free will decisions made or that may be made by a consumer or a potential consumer of long term care facility services by a licensed long term care administrator or representative or affiliate.~~

~~**"Complaint"** means an allegation that an individual licensed as a long term care administrator has violated applicable statutes and/or rules.~~

"Continuum of Care Facility" shall have the same meaning as such term is defined in the Continuum of Care and Assisted Living Act, Title 63 O.S. Section 1-890.1 et seq.

"Degree equivalency evaluation" means an equivalency evaluation of a degree that was earned from a college or university not domiciled in the United States against a degree earned from an 'accredited college or university' (see definition earlier herein) that is performed by one of the following:

(A) Educational Credential Evaluators (ECE)

(B) Educational Records Evaluation Service (ERES)

(C) International Education Research Foundation Credentials Evaluation Service (IERFCES)

(D) World Education Services (WES)

~~**"Inactive license"** means the licensee has voluntarily relinquished his/her privilege to function in the capacity as a long term care administrator. The licensee retains his/her license, but must meet the conditions for reinstatement and the Board must formally reinstate the license prior to him/her resuming practice as a long term care administrator.~~

"Formal Complaint" means a formal allegation by the Board that probable cause exists that an individual licensed as a long term care administrator has violated applicable statutes and/or rules. These allegations are written in a legal document filed with the Board by its prosecuting attorney.

"Intermediate Care Facility for the Mentally Retarded (ICF/MR)" means a facility whose primary purpose is to provide health and rehabilitative services for persons with mental retardation or a related condition, and otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq.

"Intermediate Care Facility for the Mentally Retarded, 16 Beds and Less (ICF/MR-16)" means a facility with sixteen (16) or fewer licensed resident beds that serves persons with mental retardation or with related conditions and that otherwise meets the Conditions Of Participation (COPs) found at 42 CFR §483.400 et seq.

"Lapsed License or Expired License" means a license that is no longer valid because the licensee failed to timely renew his/her license by the renewal deadline, causing the license to lapse or expire.

"License" means the written authorization of the Board granting a person the privilege of serving as a long term care administrator for a specific period of time, and further, a legal instrument obligating that person to adhere to the rules, regulations and statutes that govern the license.

"Licensing Year" shall mean the specific period of time a license/certification issued by the Board is valid. For purposes of these Rules, the term "licensing year" shall have the same meaning as "calendar year", the time period beginning

at 12:01 a.m., January 1, and ending as of 12:00 midnight, the ~~ensuing~~same December 31. A long term care administrator's license/certification is valid for one year.

"National Association of Long Term Care Administrator Boards"("NAB") is composed of state boards or agencies responsible for licensing long term care administrators. The basic objective of the NAB is to assist these boards and agencies in carrying out their statutory and regulatory responsibilities in the licensure, re-licensure and regulation of long term care administrators. One of NAB's functions is the development and administration of the national long term care administrator or Nursing Home Administrator (NHA) examination as well as the Residential Care/Assisted Living (RC/AL) examination.

"Nursing Home, Nursing Facility, Long Term Care Facility, Specialized Home, and Specialized Facility" shall have the same meanings as the term "Nursing Facility" as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq. and/or as defined at 42CFR §483.1 et seq.

"Nursing Home Administrator (NHA)" means a long term care administrator duly licensed by the Board to serve in this capacity in a nursing facility, nursing home, skilled nursing facility or any similarly worded facility type. Their scope of practice includes ICF/MR, RCF, ALF and Adult Day Care Centers and the term is synonymous with nursing facility administrator.

"Preceptor" means an individual qualified by training and experience, who is currently licensed as a long term care administrator in Oklahoma, is 'certified' by the Board as a qualified preceptor and is charged with coordinating the training of an AIT intern/trainee who is enrolled in ~~an~~a Board-approved Administrator-in-Training (AIT) internship program.

"Provisional license" means the temporary authority to serve as a long term care administrator as granted by the Board to an individual of good character who meets appropriate conditions and requirements prescribed by the Board.

"RC/AL Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in either an RCF or ALF. The scope of practice of an individual licensed as an RC/AL administrator is limited to either a licensed Residential Care Facility (RCF) or a licensed Assisted Living Facility (ALF).

"Residential Care (RC) Administrator" means a long term care administrator duly licensed by the Board to serve in this capacity in only an RCF. The scope of practice of an individual licensed as a Residential Care Administrator is limited to a licensed Residential Care Facility (RCF).

"Referral or Report" means an issue or concern regarding a long term care administrator that has been reduced to writing and is forwarded to the Board for a determination as to whether a violation of the Board's Rules has occurred. Such referral or report may be made by an individual or agency.

"Residential Care Home" or "Residential Care Facility (RCF)" shall have the same meaning as such term is defined in the Residential Care Act, Title 63 O.S. Section 1-819 et seq.

"Revocation or Revoked License" is a sanction imposed upon a ~~licensee~~license/certificate by the Board that results in a complete loss of license/certificate and all privileges attendant thereto and requires ~~licensee~~ holder to surrender his~~/her "Certificate of License"~~ license/certificate, the annual license/certification renewal card and all other license or certificate-related documents to the Board.

"Specialized facility" shall have the same meaning as such term is defined in the Nursing Home Care Act, Title 63 O.S. Section 1-1901 et seq.

"Suspension or Suspended License" is a sanction imposed upon a ~~licensee~~license/certificate by the Board. The licensee retains his~~/her "Certificate of License"~~license/certificate and his~~/her~~ annual renewal card, yet he~~/she~~ shall not function in the capacity as a long term care administrator until the Board determines that conditions responsible for the suspension no longer exist, any~~/~~or all other restoration requirements imposed by the Board have been met, and the Board has restored ~~licensee's license~~his status.

~~**"Uninvited Solicitation"** means to attempt to coerce or harass a resident of a long term care facility, a member of the resident's family or the resident's guardian for the purpose of attempting to persuade the resident to change long term care facilities.~~

SUBCHAPTER 3. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS

490:1-3-1. Organization

The members of the Board shall elect from their membership a Chair, Vice-Chair and Secretary-Treasurer to serve one-(1-) year terms beginning July 1 of each year.

(1) Nominations may be made by any member of the Board or a committee named by the Chair.

(2) Each member of the Board may cast one (1) vote for each office for which an election is held.

(3) Election shall be by majority vote of a quorum.

(4) Board officer vacancies shall be filled in the same manner when the vacancy occurs.

(5) A simple majority of the filled seats of the current Board shall constitute a quorum of the Board.

490:1-3-2. Officers and committees

(a) The Chair shall be the Chief Executive Officer of the Board. The Chair shall call and preside at all meetings and shall be a member *ex-officio* of all committees. The Chair may act for the Board in such other matters as it may authorize.

(b) The Vice-Chair, in the absence of the Chair, shall assume all of the Chair's duties and have all of the Chair's authority. The Vice Chair shall also perform such duties as may be assigned by the Chair.

(c) The Secretary-Treasurer shall keep accurate and complete minutes of all meetings (including minutes of executive sessions), attend to all correspondence, call meetings on order

of the Chair, and maintain accurate and complete records of all other business transactions and funds of the Board.

(d) The Board may appoint a recording secretary to assist in fulfilling the responsibilities of the Secretary-Treasurer. The recording secretary may be an employee of the Board.

(e) The elected officers shall constitute the Executive Committee of the Board and may provide counsel to the Chair and/or Executive Director in situations requiring immediate attention and action.

(f) Standing and special committees may be instituted and their members appointed by the Chair, and shall serve until their purpose is accomplished or until the date of the meeting at which the officers of the Board are elected. Such committees shall, at each regular meeting of the Board, report on committee activities occurring since the last regular meeting of the Board if/when any activity occurred. If there was no activity, a report is not required.

SUBCHAPTER 5. INVESTIGATIVE PROCEDURES

490:1-5-2. Receipt of ~~complaints~~referrals and reports

(a) Any person or any person on behalf of a recognized legal entity may file a written ~~complaint~~ referral or report with the Board by submitting the same via U.S. Mail, via electronic mail, via the Board's web-based electronic ~~complaint~~report form or by delivering the same in person to the Board's office.

(b) Anonymous ~~complaints~~referrals or reports shall not be accepted.

(c) A ~~complaint~~report shall be generated by the Board or Board staff when information obtained from the media, law enforcement, any regulatory agency, or any other source indicates a violation may have occurred.

(d) The Board shall reduce to writing a verbal ~~complaint~~ report received by phone or in person.

(e) If the ~~complainant~~individual making the report is a facility resident, the ~~resident's~~resident's personal or legal representative, or a current employee of the facility, the Board shall keep the ~~complainant's~~individual's identity confidential.

(f) 'Paper'~~complaints~~referrals or reports received by Board staff shall be receipted with a 'date stamp' as to the date the same were received in the Board's office, or, as applicable, by the electronic 'date stamp' created when the electronic version of the ~~complaint~~referral or report was either created/sent ~~by complainant~~ or electronically received by Board staff.

490:1-5-2.1. ~~Receipt of~~Action on referrals ~~or~~and reports

(a) ~~The Board~~A Probable Cause Committee shall review and may ~~takeappropriate~~recommend action to the Board on any and all referrals or reports received.

(b) A formal complaint may be generated by the Board or Board staff when ~~information obtained from the referral or report indicates~~the Probable Cause Committee determines that a violation may have occurred.

490:1-5-3. Complaints: investigations and investigative reports

(a) Each ~~complaint~~referral or report shall be thoroughly investigated ~~and an investigative report prepared~~. If~~Investigative~~investigative reports are prepared, such reports are confidential.

(b) ~~The information contained in the~~An investigative report shall not be deemed to be a record as that term is defined in the Oklahoma Open Records Act nor shall the ~~information~~report be subject to subpoena or discovery in any civil or criminal proceeding.

490:1-5-6. Notice

(a) All notices or other papers requiring service in an individual proceeding shall be served in one of the following manners:

(1) personally by any person appointed to make service by the Director of the Board and in any manner authorized by the law of this State for the personal service of summonses in proceedings in a state court; or,

(2) by certified mail to the respondent at the last address provided to the Board by respondent or to respondent's attorney.

(b) Service of notice. Such service shall be complete upon the personal service or certified mailing of the notice or other paper to respondent's last address provided to the Board by respondent or respondent's attorney.

490:1-5-7. Hearing

(a) Individual proceedings shall be conducted by the Board according to the provisions established in 63 O.S. Sections 330.64 and 330.65 and 75 O.S. Section 309 et seq.

(1) The respondent shall bring to the hearing twenty (20) copies of all documents that he~~/she~~ intends to offer into evidence as well as twenty (20) copies of all motions that he~~/she~~ intends to submit for Board consideration.

(2) An electronic recording of the proceeding shall be made by the Board, and a copy of the electronic recording shall be provided by the Board to a party to the proceeding at that party's request. Should there be any equipment failures, the minutes of the meeting and proceedings will be provided instead of the electronic recording.

(3) The full proceedings of any hearing may be transcribed. The party ~~requesting~~ wanting the services of a court reporter to transcribe the proceedings shall make the arrangements with a court reporter ~~to transcribe the proceedings~~ for such transcription~~, and~~ pay the reporter's fee(s)~~. A party tothe proceedings shall~~and notify the Board in advance of the hearing of the expected presence of a court reporter.

(b) Any party aggrieved by a decision of the Board following a hearing may appeal directly to District Court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma Statutes.

490:1-5-7.1. Administrative fines

(a) The Board may impose administrative fines, in an amount to be determined by the Board, against ~~licensees~~persons~~who do not comply~~whom the Board has determined have not complied with the provisions of the Oklahoma statutes relating to Long Term Care Administrators or rules adopted by the Board.

~~(b)~~ Administrative fines shall not exceed One Thousand Dollars ($1,000.00) per violation.

(~~c~~b) In assessing a fine, the Board shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board.

(~~d~~c) Administrative fines assessed by the Board on-or-after August 1, 2009, must be paid, in full, within thirty (30) calendar days of the date assessed, unless other payment terms have been agreed to, in writing, by the Board. ~~Administrative fines assessed by the Board before August 1, 2009, but for which an unpaid balance remains, and the Board has not agreed, in writing, to other payment terms for payment of such assed fine(s), must be paid, in full, on or before August 30, 2009.~~

(~~e~~d) Failure to timely pay Administrative fines assessed by the Board may subject the individual to additional Board sanction(s), including license suspension or revocation.

(e) Failure of the licensee to provide verification of completion of the required number of CEUs shall result in specific standard fines and penalties (automatically approved) that will be enforced per 490:1-9-5.

490:1-5-8. Reporting

(a) The Board shall report final adverse actions to the Healthcare Integrity and Protection Data Bank (HIPDB) in accordance with requirements at Title 45, Code of Federal Regulations, Part 61.

(b) Disciplinary action taken against a ~~licensee~~license/certificate holder and reported to the HIPDB shall be reported on the registry as provided in 63 O.S. §330.64.

(c) If the Board has knowledge that the ~~licensee~~license/certificate holder is licensed or certified as a long term care administrator in any other legal jurisdiction(s) and/or if the Board has knowledge that ~~the licensee~~this person holds other professional license(s) or certification(s), the Board may report disciplinary action taken against ~~the licensee~~this person to all appropriate state licensing authorities, federal regulatory authorities and professional certification organizations.

(d) Referrals may be made to law enforcement authorities, the State's Medicaid Fraud and Abuse authorities, Adult Protective Services, the State's Ombudsman, or any other licensing or regulatory entity.

SUBCHAPTER 6. ADMINISTRATOR REGISTRY [REVOKED]

490:1-6-1. General provisions [REVOKED]

~~(a) The Board shall create a registry of complaints or referrals made against licensed administrators pursuant to 63 O.S. §330.64.~~

~~(b) No complaints or referrals shall be included in the registry, nor shall any complaint or referral be published on the Board's website unless there has been a finding by the Board that a complaint or referral has merit.~~

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-1. General provisions for continuing education programs

(a) In order to receive Board recognition and continuing education credit, continuing education programs shall be submitted to the Board for approval prior to presentation as indicated under this Chapter.

(b) All continuing education programs submitted to the Board for its evaluation and possible 'approval' for purposes of granting Oklahoma continuing education credit hours ~~will~~shall be submitted with a $55.00 per credit hour, non-refundable fee. Approval will be granted only for specific programs for specific dates of presentation. The Board~~, in its sole discretion, may~~shall waive this fee for programs sponsored by other State or federal agencies. Recurring presentations also require Board approval, but may be considered and approved by the Board based upon a report of program changes from the previously-approved program.

(c) The Board ~~shall~~may withdraw approval for continuing education credit should subsequent information come to its attention that program content differed from that approved.

(d) Sponsors shall be responsible for obtaining satisfactory documentation of attendance and submission of the attendance records to the Board.

(e) All programs approved by the National Continuing Education Review Service (NCERS), National Association of Long Term Care Administrator Boards (NAB) that receive a NCERS/NAB approval number will be presumptively accepted by the Board for purposes of meeting Oklahoma's annual continuing education requirements.

(f) The Board may approve, sponsor and/or conduct its own educational and training programs for continuing education credit if such programs meet the criteria established in this Chapter.

(g) The Board reserves the right to monitor any and all approved programs.

(h) Programs that deal specifically with internal affairs of an organization do not qualify for continuing education hours.

(i) Programs from the Administrator University may qualify for continuing education hours if they meet the criteria outlined in this Chapter and have been so approved by the Board.

(j) Sponsors, at their discretion, may award partial credit for attendees who they deem have been late, left early, or otherwise not participating in the full activities of the program. The Board approval for a program is for "up to" the number of hours approved and it is the responsibility of the sponsor to judiciously grant credit. This also allows the sponsor to award

fewer hours in the event of such unplanned changes to the program such as a scheduled speaker being unable to make his presentation. Failure to protect the integrity of the hours approved on the part of the sponsor could result in future denial of program approval by the Board.

490:1-9-2. Criteria for continuing education programs

(a) In order for the Board to approve a program for continuing education hours, an application shall be completed by the sponsor and reviewed and approved by the Board.

(b) Sponsors shall submit their application to the Board at least 30 days in advance of the program, provided however, should the Board fail to meet through lack of a quorum or other circumstance, the application will be reviewed at the next meeting of the Board and if approved, hours will be awarded retroactively.

(c) The application shall contain documentation that certifies the following criteria are being met:

(1) The program shall relate to Long Term Care Administration and be designed to promote continued knowledge, skills and attitudes consistent with current standards in long term care administration.

(2) The program shall be designed to assist administrators to improve their professional competencies.

(3) The program shall be open and available to all long term care administrators in Oklahoma.

(4) The facility where the program will be conducted shall provide adequate space to accommodate potential attendees and have the ability to supply the needed equipment.

(5) The faculty/instructors must have experience in long term care supervision and administration, or have expertise in teaching and instructional methods suitable to the subject presented, or have suitable academic qualifications and experience for the subject presented.

(6) The learning objectives in the program must be reasonable and clearly stated in behavioral terms which define the expected outcomes for participants.

(7) The learning objectives must be consistent with the program content and the mechanism by which learning objectives are shared with participants must be identified.

(8) The teaching methods in the program must be clearly stated, must be appropriate to the subject matter, and must allow suitable time.

(9) Instructional aids and resource materials that will be utilized in the program must be described.

(10) Sponsors ~~must have expertise~~should be qualified in the subject matter presented.~~and should be from an accredited educational institution, a professional association and/or trade association, a private educational group, or a state agency.~~ The Board, in its sole discretion, may approve programs from an accredited educational institution, a professional association and/or trade association, a private educational group, or a state agency, or from another source if the program content is deemed to be of sufficient value to Oklahoma long term care administrators.

(11) The registration fee for a program must be published clearly on promotional material.

(12) Registration fees may be reviewed by the Board.

(13) The sponsor must allow the Board to evaluate the program.

(14) The sponsor must provide an evaluation form, approved by the Board, for each program participant's responses.

(15) Within 15 days after the conclusion of the program, the sponsor must provide to the Board a list of participants and a summary of the evaluations for each program.

(16) The application presented to the Board must state the method to be used in certifying attendance or on-line completion.

(17) To receive full credit, attendees must attend the full program and/or log-in for on-line attendance for the full program. See also 490:1-9-1(j).

(18) Partial credit ~~with~~of a minimum of two clock hours may be earned in a divisible program.

~~(19) Program content shall be considered by the Board in determining whether partial credit will be granted.~~

(~~20~~19) Instructional hours must be based upon clock hours (60 minutes = 1 clock hour).

(~~21~~20) The agenda must show registration, meal times (not included in credit hours), and a breakdown of the daily educational activities.

(~~22~~21) The maximum number of hours that can be approved or earned shall be seven clock hours per day.

(~~23~~22) The target group for programs shall be long term care administrators and other disciplines related to long term care.

490:1-9-3. Approval of continuing education ~~Programs~~programs

(a) In order to be approved, continuing education programs shall be appropriately designed for Long Term Care Administrators and shall meet the criteria outlined in this Chapter.

(b) If a program is disapproved, the sponsor shall be notified in writing of the reasons for rejection within ten (10) working days of the Board's decision.

(c) If a program is disapproved, the sponsor has 30 days to appeal in writing. The appeal must include a copy of the original application package and any additional information the sponsor feels is needed for further clarification.

(d) The Board may approve program content or a portion of the program content, even though the same content or a portion of the program content has been previously approved by the Board for the same calendar year. ~~However, licensed administrators who have attended and received credit for such previously approved program content shall be denied credit for attending subsequent duplicate programs.~~

490:1-9-4. Continuing education requirements

(a) Each licensee shall be responsible for identifying his/~~her~~ own continuing education needs, taking the initiative in seeking continuing professional education activities to meet those

needs, and integrating new knowledge and skills into ~~their~~his duties.

(b) Individuals who are newly licensed as a nursing home or ICF/MR administrators or certified as Assistant Administrators are required to successfully complete continuing education hours equivalent to a rate of two (2) hours per month, beginning with the month following the month his~~/her~~ license/certificate is issued, for each month he~~/she~~ holds the license/certificate during the current licensing year. For certified assistant administrators, this is a condition of employment.

(1) Individuals who are newly licensed as RC/AL administrators are required to successfully complete continuing education hours equivalent to a rate of one and one-half (1.5) hours per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(2) Individuals who are newly licensed as RC only administrators are required to successfully complete continuing education hours equivalent to a rate of 1.3 hours per month, rounded up to the next half hour increment (e.g., 1.3 = 1.5; 2.6 = 3), beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(3) Individuals who are newly licensed as Adult Day Care administrators are required to successfully complete continuing education hours equivalent to a rate of one (1) hour per month, beginning with the month following the month their license is issued, for each month they hold the license during the current licensing year.

(c) Licensees holding ~~an~~a ~~'Active'~~nursing home administrator license and Certified Assistant Administrators shall successfully complete twenty-four (24) clock hours of continuing education during each licensing year. For Certified Assistant Administrators this shall be a condition of employment.

(1) RC/AL administrators shall successfully complete eighteen (18) clock hours of continuing education during each licensing year.

(2) Residential Care only administrators shall successfully complete sixteen (16) clock hours of continuing education during each licensing year.

(~~2~~3) Licensed Adult Day Care Administrators are required to successfully complete twelve (12) clock hours of continuing education during each licensing year.

(d) Licensees/certificate holders are responsible for maintaining their own continuing education records.

(e) Carry-over of continuing education hours earned in one licensing year that were in excess of the hours required for that year to a subsequent licensing year is not permitted.

(f) Licensed administrators who have attended and received credit for previously approved program content shall be denied credit for attending subsequent duplicate programs in the same calendar year.

(~~f~~g) A licensee/certificate holder who cannot meet the continuing education requirement due to illness, emergency or hardship may petition the Board, in writing, requesting a waiver of the CEU requirement. Any such waiver request must be received and acted-upon by the Board prior to the end of the licensing ~~year~~period in which the CEU requirement will not be met. The waiver request shall explain why compliance is not possible, and include appropriate documentation. Waiver requests will be evaluated and acted upon by the Board on a case-by-case basis.

(~~g~~h) In the event a licensee fails to provide the Board, upon request, with documentation that the continuing education requirements have been met, the licensee will be subject to sanction by the Board, ~~including~~ which may include suspension or revocation of his~~/her~~ license. This is always considered a reportable offense even on the first offense and will appear as a violation in the Registry.

(~~h~~i) A licensee whose license is suspended by the Board for disciplinary reasons is not exempt from the continuing education requirements, and must, therefore, successfully complete ~~twenty-four (24)~~the required number of continuing education hours commensurate with his license/certificate type during any licensing year(s) in which his~~/her~~ license is under suspension. Licensee shall, upon Board request, furnish documentation that the continuing education requirements have been met. Failure to provide such requested documentation shall subject licensee to sanction by the Board, including further suspension or revocation of his license.

~~(i) Continuing education hours are not required for a licensee whose license is on inactive status except as otherwise required at OAC 490:10-1-10.(b)2.~~

(~~i~~j) All CEU hours earned for programs approved by the NCERS/NAB or approved by the Board may be utilized by a licensee for purposes of meeting the annual CEU requirement in the licensing ~~year~~period in which the hours were earned.

[OAR Docket #12-713; filed 5-24-12]

TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FORLONG TERM CARE ADMINISTRATORS
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-715]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Fees and deposits
490:1-7-1. Fees and deposits [AMENDED]
490:1-7-2. Schedule of fees [AMENDED]
Subchapter 9. Continuing education
490:1-9-5. Auditing of continuing education hours [AMENDED]
AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.
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ANALYSIS:
The purpose of the rules changes was to update the requirements for long term care administrators in Oklahoma, primarily to include additional administrator types added to the purview of this Board (OSBELTCA) and to make proper allowances for their licensure by this Board, pursuant to recent statutory changes and under the authority of those statutory changes by the newly appointed Board. This required the addition of more terms to be defined or re-defined, detailing requirements for licensure for these new types of administrators and generally correcting terminology within the rules to reflect these changes. Additionally, there were other minor issues corrected to include the renewal of certified assistant administrators annually and requiring these same individuals to accomplish continuing education as a condition of employment. Likewise, the penalty for failure to accomplish continuing education, for all administrator types, was codified. The totality of these rules changes encompass Chapters 1, 10 and 15 (and a portion of Chapter 1 was approved separately by HJR1111).
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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, 2012:

SUBCHAPTER 7. FEES AND DEPOSITS

490:1-7-1. Fees and deposits

(a) All fees, fines and costs collected by the Board under the provisions of 63 O.S. Sections 330.51 et seq. shall be deposited with the State Treasurer within twenty-four (24) hours of receipt, in a fund to be known as the Oklahoma State Board of Examiners for Long Term Care Administrators Revolving Fund. This fund may be used for the purposes of the Board as provided in the Statutes.
(b) Fees, fines and costs received by the Board for any purpose described herein shall become the exclusive property of the Board and shall not be refunded in whole or in part for any reason or purpose without Board the Executive Director's approval.
(c) The following fees as listed within 490:1-7-2~~.~~, are due and payable to the Board, in full, immediately upon assessment by the Board:
(1) Returned Check Fees or Fees for Non-Sufficient Funds (NSF) related to Electronic Funds Transfers;
(2) Late Fees; and/or
(3) Late Fees for Failure to Provide Current Contact information.
(d) Unless otherwise agreed to in writing by the Board, all other fees charged by the Board are due and payable to the Board, in full, on-or-before the date the Board or Board staff is to take action on the item wherein a fee is specified.
(e) Failure to timely pay Administrative fees assessed by the Board may subject the individual to additional Board sanction(s), including license suspension or revocation.

490:1-7-2. Schedule of fees

(a) Initial Long Term Care Administrator License - $200.00
(b) Annual Renewals~~, Active~~
(1) NHA License - $200.00;
(2) Certified Assistant - $75.00;
(3) RC/AL License - $175.00;
(4) RC License - $100.00
(5) ADC License - $100.00.
(c) Late Fee - $100.00 for each calendar week, or portion thereof, a licensee fails to timely meet the requirements of a deadline or due date established or agreed to, in writing, by the Board.
(d) Pre-Licensing File Origination and Maintenance fee - $100.00
(e) Provisional License (per application) - $200.00
~~(f) Annual Renewal, Inactive License - $200.00~~
(~~g~~f) Name Change on "Certificate of License" (per request) - $25.00
(~~h~~g) Endorsement Licensure Questionnaire (per request) - $50.00
(~~i~~h) Replacement "Certificate of License" (due to loss or damage) - $25.00
(~~j~~i) State Standards Review (per person) - $100.00
(~~k~~j) State Standards Examination Packet - $50.00
(~~l~~k) State Standards Examination - ~~the greater of~~ $100.00 per examinee ~~or the fee determined and assessed by the Intermediary.~~
(~~m~~l) State Standards Examination, ~~convenience fee,~~ unscheduled examination - ~~the greater of $200.00 per examinee or~~ $500.00 ~~for all~~per examinee~~s, assessed per examination proctored, or the fee per examinee determined and assessed by the Intermediary.~~
(~~n~~m) Board-Sponsored Educational Workshop (per day) - up to $1,000 per attendee.
(~~o~~n) Photocopies (per page) - $0.25
(~~p~~o) Rules and Regulations (paper copy), per page - $0.25
(~~q~~p) Administrator-In-Training (AIT) Program: Internship Permit (per intern/trainee) - $350.00
(~~r~~q) Continuing Education Program Approval Fee (per credit hour) - $55.00
(~~s~~r) Mailing List on Plain Paper (per page) - $0.25
(~~t~~s) Electronic Mailing List - $10.00
(~~u~~t) Returned Check Fee or Fee related to Non-Sufficient Funds (NSF) to cover an Electronic Funds Transfer (EFT) - $30.00
(~~v~~u) Late Fee for Failure to Provide Current Contact Information - $75.00
(~~w~~v) Fee for Administrator University - Not to exceed $200.00 per day

(~~x~~w) Convenience Fee for Online Licensure Renewal - Determined by Intermediary
(~~y~~x) Review by Board in order to determine whether or not an individual applicant meets the minimum requirements to be able to serve as an Assistant Administrator - $200.00
~~(z) Status change fee, license on 'inactive' status reinstated to 'active' status - $100.00~~
~~(aa) Oklahoma Preceptor/Administrator In Training (AIT) training manual (per page) - $0.25~~
(~~bb~~y) License Application processing fee - $100.00 (valid for one year).
(z) Temporary licensure fee - $200.00 (wherein the Executive Director may issue a temporary license, upon request by the applicant and with all requirements being met, expiring at the next Board meeting date when the Board would issue a license, enabling one who is qualified to work while waiting for the next Board meeting).

SUBCHAPTER 9. CONTINUING EDUCATION

490:1-9-5. Auditing of continuing education hours

(a) The Board may request continuing education information from sponsors for audit purposes only.
(b) The Board does not retain any record of continuing education hours completed by individual administrators except as it may otherwise obtain in its performance of the annual CEU compliance audit.
(c) An annual audit of at least 5% of the total number of each type of~~licensed~~ administrator~~s~~ will be made to verify compliance with the annual CEU requirement. This percentage may be increased at the Board's discretion.
(d) Failure of a licensee to provide verification of continuing education hours completed, if requested by the Board, shall result in disciplinary action against the licensee. The minimum penalty for a first time offense is $50.00 per CEU short and completion of twice the number of CEUs short, due within 120 days. These CEUs cannot be applied to the current year's requirements. This is also a HIPDB (Healthcare Integrity and Protection Data Bank) reportable offense. For a second offense, the penalty will double. Any subsequent offenses shall be referred to the Board for determination of an appropriate penalty which may include suspension or revocation. The Administrator may also request a formal hearing before the Board in lieu of the penalty for either the first or second time offense, in which case a formal complaint shall be drafted and the Board shall have a full range of penalty options available to them, to include suspension and revocation. These automatic penalties for the first and second offense do not require Board approval; however, any variation from this "standard" will require Board approval. A formal complaint and appropriate order will still be drafted by the Board's attorney and the action taken shall be reported to the Board.

[OAR Docket #12-715; filed 5-24-12]

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

[OAR Docket #12-716]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing of Long Term Care Administrators
490:10-1-1. Purpose [AMENDED]
490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]
490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR) administrators (also known as nursing home administrators [AMENDED]
490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators [NEW]
490:10-1-3.2.Grandfathered License [NEW]
490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators [NEW]
490:10-1-3.4 Grandfathered License [NEW]
490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators [NEW]
490:10-1-3.6 .Grandfathered License [NEW]
490:10-1-4. Requirements for licensure by reciprocity/licensure by interstate endorsement for long term care administrators [AMENDED]
490:10-1-5. Requirements for a provisional license as a nursing home administrator [AMENDED]
490:10-1-5.1. Requirements for a provisional license as a residential care/assisted living administrator [NEW]
490:10-1-5.2. Requirements for a provisional license as an adult day care administrator [NEW]
490:10-1-9. Inactive license [REVOKED]
490:10-1-10. Requirements for reinstatement from inactive status [REVOKED]
490:10-1-11. Requirement for restoration from suspended status [AMENDED]
Subchapter 3. Application for Long Term Care Administrator Licensure [AMENDED]
490:10-3-1. Application for initial licensure, licensure by reciprocity/interstate endorsement, or provisional license [AMENDED]
490:10-3-2. National ~~("NAB")~~ examination [AMENDED]
490:10-3-3. State Standards examination [AMENDED]
490:10-3-4. Admission to the State Standards and national examinations [AMENDED]
490:10-3-5. Application for licensure renewal [AMENDED]
490:10-3-6. ~~Licensure~~Provisionallicensure term [AMENDED]
Subchapter 5. Discipline
490:10-5-3. Disciplinary action [AMENDED]
490:10-5-5. Summary Suspension [AMENDED]
Subchapter 7. Administrator University
490:10-7-3. General provisions [AMENDED]
Subchapter 8. Administrator-In-Training (AIT) internship program for Nursing Home Administrators [AMENDED]
490:10-8-2. Application [AMENDED]
490:10-8-3. Training permit [AMENDED]
490:10-8-4. Preceptor selection [AMENDED]
490:10-8-5. Preceptor qualifications [AMENDED]
490:10-8-5.1. Preceptor designation/assignment to an AIT intern/trainee [AMENDED]
490:10-8-6. Curriculum for nursing home administrators AITs [AMENDED]
490:10-8-7. Module reports for nursing home administrator AITs [AMENDED]
490:10-8-8. Preceptor's final report [AMENDED]
490:10-8-10. Change of status and discontinuance [AMENDED]
490:10-8-11. Dismissal from program [AMENDED]
490:10-8-13. AIT time on the job [AMENDED]

490:10-8-14. AIT Internship exempt status [AMENDED]
Subchapter 13. Standards for Administrators
490:10-13-1. Administrator Code of Ethics [AMENDED]
490:10-13-2. Administrator Responsibilities [AMENDED]
490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two (2) or-more licensed long term care nursing facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals is/are employed in Assistant Administrator capacities [AMENDED]

AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.

DATES:
Comment period:
February 1, 2012, through March 2, 2012
Public hearing:
March 2, 2012
Adoption:
March 2, 2012
Submitted to the Governor:
March 6, 2012
Submitted to House:
March 6, 2012
Submitted to Senate:
March 6, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 3, 2012
Final adoption:
May 3, 2012
Effective:
July 1, 2012

ANALYSIS:
The purpose of the rules changes was to update the requirements for long term care administrators in Oklahoma, primarily to include additional administrator types added to the purview of this Board (OSBELTCA) and to make proper allowances for their licensure by this Board, pursuant to recent statutory changes and under the authority of those statutory changes by the newly appointed Board. This required the addition of more terms to be defined or re-defined, detailing requirements for licensure for these new types of administrators and generally correcting terminology within the rules to reflect these changes. Additionally, there were other minor issues corrected to include the renewal of certified assistant administrators annually and requiring these same individuals to accomplish continuing education as a condition of employment. Likewise, the penalty for failure to accomplish continuing education, for all administrator types, was codified. The totality of these rules changes encompass Chapters 1, 10 and 15, (and a portion of Chapter 1 was approved separately by HJR1111).

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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, 2012:

SUBCHAPTER 1. LICENSING OF LONG TERM CARE ADMINISTRATORS

490:10-1-1. Purpose

This Chapter has been adopted for the purpose of complying with the provisions of the Administrative Procedures Act. This Chapter implements the specific rules for licensing administrators serving in the following facility types:

(1) Nursing facilities and specialized facilities licensed pursuant to 63 O.S. Section 1-1901 et seq., including but not limited to specialized facilities for persons with mental retardation, developmental disabilities or Alzheimer's disease; and

(2) ~~The nursing care service of acontinuum~~Continuum of ~~care~~Care~~facility~~facilities or Assisted Living Center (ALC) licensed pursuant to 63 O.S. Section 1-890.1 et seq.

(3) Residential Care Homes licensed pursuant to 63 OS Section 1-819 et seq.

(4) Adult Day Care Centers licensed pursuant to 63 OS Section 1-870 et seq.

490:10-1-2.1. General requirements that must be met by each applicant

(a) Applicants shall not be less than twenty-one (21) years of age at the time the license is issued.

(b) Each applicant shall be a United States citizen, or be a qualified alien under the Federal Immigration and Naturalization Act and lawfully residing in the United States.

(c) Each applicant must establish to the satisfaction of the Board that the applicant is of reputable and responsible character.

(d) Each applicant shall submit to a criminal background check. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved.

(e) Each applicant shall report to the Board any adverse action taken by any licensing or certification entity in any jurisdiction. The Board shall examine the reasons for the action(s) and may consider this information in granting or denying a license.

(f) Each applicant shall be in compliance with State income tax requirements pursuant to 68 O.S., 238.1.

(g) Each applicant shall remit any and all required fees associated with obtaining a license, including any outstanding fees or fines.

(h) Applicants must have a working ability in the English language sufficient to communicate, both orally and in writing, with residents, family members, employees, the general public, and representatives of State and federal agencies and to engage in the practice of long term care administration.

(i) Each applicant shall meet ~~any~~all other appropriate conditions and requirements as may be prescribed by the Board.

(j) When the Board denies an application for licensure, the Board will not reconsider such denial. A person cannot reapply for licensure until one year after denial of the application has passed.

490:10-1-3. Requirements for initial licensure for nursing/skilled nursing facility (includes ICF/MR) administrators (also known as nursing home administrators)

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure shall meet the requirements in this Section.

(b) Each applicant shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) "Official Proof" [see 490:10-3-1.1. (relating to evidence requirements)] of successful completion of a formal program or program(s) of study, wherein applicant received, at a minimum, a bachelor's degree:

(A) from an accredited college or university if the applicant's degree is from a school domiciled in the United States; or

(B) if the applicant received his~~/her~~ degree from a college or university domiciled outside the United States [and, as such, the college/university does not fall under the accreditation purview of any of the six (6) regional accreditation organizations recognized by the U.S. Department of Education and by the Board], applicant shall, at applicant's expense, cause a degree equivalency evaluation of his degree to be performed and the results sent directly to the Board. The Board shall assess the results of this degree equivalency evaluation and, at its sole discretion, determine if applicant's education and/or degree are equivalent, at a minimum, to a bachelor's degree earned from an accredited college or university;

(2) Receipt of a passing score on the national "NAB" NHA examination conducted by the National Association of Long Term Care Administrator Boards (NAB);

(3) Receipt of a passing score on the Oklahoma State Standards examination within the ~~sixty (60)~~twenty-four (24) months preceding the month in which the Board ~~would~~will be taking action to license the applicant, and if applicant is not licensed during this ~~60~~24-month time period, applicant ~~would~~will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(4) Successful completion of Administrator University within the ~~sixty (60)~~twenty-four (24) months preceding the month in which the Board ~~would~~will be taking action to license the applicant, and if applicant is not licensed during this ~~60~~24-month time period, applicant ~~would~~will have to pay all required fees and re-take Administrator University prior to any future licensing attempts (if the candidate has a degree in long term care administration from an institution accredited by NAB, the Administrator University may be waived);

(5) Successful completion of the Administrator-in-Training (AIT) program (or documentation of an equivalent internship as part of a degree in long term care from an institution accredited by NAB) within the ~~sixty (60)~~twenty-four (24) months preceding the month in which the Board will be taking action to license the individual, and if applicant is not licensed during this ~~(60)~~24-month time period, applicant ~~would~~will have to pay all required fees and complete another AIT program prior to any future licensing attempts; and

(6) ~~payment~~Payment of the required fee(s).

(c) The Board, at its sole discretion, may waive the Administrator University requirement and/or the Administrator-in-Training requirement if the applicant was previously licensed in Oklahoma as a long term care administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

(d) After the Board's staff has determined that all requirements for initial licensure have been met, an applicant may apply for a "temporary" license. The Executive Director may review and approve or disapprove issuance of a temporary license after an application has been made and fees paid. An approved temporary license shall expire at the next Board meeting when the application for licensure (no longer temporary) must be approved or disapproved by the Board.

490:10-1-3.1. Requirements for initial licensure for residential care/assisted living (RC/AL) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC/AL administrator shall meet the requirements in this Section. Administrators holding an RC/AL license may serve as an administrator only in either an RCF or ALF.

(b) Each applicant for initial licensure as a RC/AL administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification:

(A) through training from an institution of higher learning whose program has been approved by the Board; or

(B) receipt of a nationally recognized assisted living certificate of training and competency for assisted living administrators that has been reviewed and approved by the Board;

(C) All sources of certification previously approved through the Oklahoma State Department of Health requirements shall be presumptively approved by the Board until November 1, 2013 but shall thereafter be required to be reviewed and approved by the Board.

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC/AL administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts;

(3) Receipt of a passing score on the national "NAB" RC/AL examination conducted by the National Association of Long Term Care Administrator Boards (NAB) and

(4) Payment of the required fee(s).

(5) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination; a passing score on the State Standards exam is a prerequisite to the NAB RC/AL exam.

(c) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously certified or licensed in Oklahoma as an RC/AL administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

490:10-1-3.2. Grandfathered license

(a) Effective October 1, 2012, all RC/AL Administrators shall be licensed by the Board. Individuals who were certified in Oklahoma as Residential Care or AL Administrators prior to the effective date of these rules, who are currently in good standing and submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as RC/AL Administrators. This required documentation includes completing an application, proof of previous certification, completion of current CEU requirements and the applicant shall submit to a background check. The Board may verify certifications through the original certification source. All applicants currently serving as RC/AL Administrators whose certifications have lapsed for any reason, including failure to meet CEU requirements, or who fail to meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.

(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, non-current CEUs, missing documentation or their good standing is in question, shall be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.

490:10-1-3.3. Requirements for initial licensure for residential care (RC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an RC administrator shall meet the requirements in this Section. Administrators holding an RC license may serve as an administrator only in an RCF and may not serve in any other facility type.

(b) Each applicant for initial licensure as a RC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) Current training certification:

(A) through training from an institution of higher learning whose program has been approved by the Board;

(B) All sources of certification previously approved through the Oklahoma State Department of Health requirements shall be presumptively approved by the Board until November 1, 2013 but shall thereafter be required to be reviewed and approved by the Board.

(2) Receipt of a passing score on the Oklahoma State Standards examination for RC administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this 24-month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; and

(3) Payment of the required fee(s).

(4) Training certification required in (b)(1) above is a prerequisite to being able to take the State Standards examination.

(c) The Board, in its sole discretion, may waive re-completion of the training requirement if the applicant was previously certified or licensed in Oklahoma as an RC administrator, was in good standing with the Board while applicant was previously licensed in Oklahoma, and has been active in long term care for at least two (2) of the last five (5) years.

490:10-1-3.4. Grandfathered license

(a) Effective October 1, 2012, all RC Administrators shall be licensed by the Board. Individuals who were certified in Oklahoma as Residential Care Administrators prior to the effective date of these rules, who are currently in good standing and submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as RC Administrators. This required documentation includes completing an application, proof of previous certification, completion of current CEU requirements and the applicant shall submit to a background check. The Board may verify certifications through the original certification source. All applicants currently serving as RC Administrators whose certifications have lapsed for any reason, including failure to meet CEU requirements, or who fail to meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.

(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, non-current CEUs, missing documentation or their good standing is in question, shall be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.

490:10-1-3.5. Requirements for initial licensure for adult day care (ADC) administrators

(a) In addition to the general requirements found in this Chapter, each applicant for initial licensure as an ADC administrator shall meet the requirements in this Section.

(b) Each applicant for initial licensure as an ADC administrator shall provide, or shall cause to be provided, written evidence satisfactory to the Board of the following:

(1) One of the following:

(A) A high school diploma AND five (5) consecutive years supervisory experience (full-time or equivalent) in a long term care or geriatric setting; OR

(B) A Bachelor's degree AND one (1) year of supervisory experience, preferably in a social or health services setting; OR

(C) An active Oklahoma Nursing license (either LPN or RN), in good standing, and two years of nursing experience.

(2) Successful completion of Board approved training for adult day care administrators;

(3) Receipt of a passing score on the Oklahoma State Standards examination for adult day care administrators within the twenty-four (24) months preceding the month in which the Board will be taking action to license the applicant, and if applicant is not licensed during this the twenty-four (24) month time period, applicant will have to pay all required fees and re-take the examination prior to any future licensing attempts; and

(4) Payment of the required fee(s).

490:10-1-3.6. Grandfathered license

(a) Effective October 1, 2012, all Adult Day Care Administrators shall be licensed by the Board. Individuals who were Adult Day Care Administrators, including those currently in upper management who routinely directly supervise and serve as interim administrators in the absence of the administrator, as of the effective date of these rules and who submit the required documentation to the Board prior to the deadline of October 1, 2012, may be licensed by the Board as Adult Day Care Administrators. This required documentation includes completing an application, providing proof that the applicant is currently employed as an Adult Day Care director/administrator, and the applicant shall submit to a background check. All applicants currently serving as Adult Day Care Administrators who do not meet the October 1, 2012 deadline and all new applicants must meet the initial application requirements set forth above. The initial "grandfathered" licenses expire on December 31, 2013. These licenses shall be renewable every year following that initial expiration as long as the license remains in good standing and required fees have been paid.

(b) Applicants for grandfathering who do not appear to have met the requirements for any reason, as determined by the staff on initial review, for such things as, but not limited to, issues or concerns with the background check, missing documentation or their good standing is in question, shall be referred to the Education Committee who shall review the application documents and resolve the issue or make a recommendation to the Board to either approve or deny the application.

490:10-1-4. Requirements for licensure by reciprocity/licensure by interstate endorsement for long term care administrators

(a) In addition to the general requirements found in this Chapter, each applicant for licensure by reciprocity/licensure by interstate endorsement as a nursing home administrator shall meet the requirements of this Section.

(1~~b~~) The Board has entered into a licensure by reciprocity/licensure by endorsement agreement with the National Association of Long Term Care Administrator Boards (NAB) that permits licensure for candidates for Nursing Home Administrators from other jurisdictions who have met the following minimum requirements.

(A~~1~~) Submission to the Board of "Official Proof" of successful completion of a formal program(s) of study and, at a minimum, receipt of a bachelor's degree that meets the requirements set forth in 490:10-1-3.;

(B~~2~~) Submission to the Board of evidence of current licensure, in good standing, as a long term care/nursing home administrator, and submission of proof that applicant has:

(i~~A~~) served full time as the administrator-of-record for the past two (2) consecutive years in a jurisdiction regulated by a licensing authority; or

(ii~~B~~) been active in long term care for at least two (2) of the past five (5) consecutive years;

(C~~3~~) Submission to the Board of proof of initial licensure as a long term care/nursing home administrator, including active NAB scores, and proof that such license is in good standing with that licensing authority;

(D~~4~~) Submission to the Board of full disclosure of any/all pending disciplinary actions or current investigations against applicant as well as any sanctions imposed against applicant's long term care/nursing home administrator license or against any professional license he~~/she~~ presently holds or has ever held in any other State or jurisdiction, including, but not limited to: revocation; suspension; 'voluntary surrender'; other licensure restriction(s) that limited applicant's practice under such license; or the assessment of monetary penalties or fines or the assessment of additional CEUs by the licensing entity as a result of disciplinary proceedings~~;~~. ~~—~~Loss of a professional license due to nonrenewal or failure to obtain the required number of annual CEU hours ~~are~~ is excepted from the full and complete disclosure otherwise required herein;

(E~~5~~) Documentation related to current or previous licensure shall be submitted directly to the Board by the state-appointed authority(ies) regulating the respective license(s); and

(~~6~~F) ~~payment~~Payment of the required fee(s)

(~~c~~2) The Board, in its sole discretion, shall assess the magnitude of any disciplinary action taken by other licensing authorities ~~it~~in its determination of applicant's eligibility for an Oklahoma license.

(~~d~~3) Applicants otherwise determined eligible for Oklahoma licensure by reciprocity/interstate endorsement shall be required to sit for and receive a passing score on the Oklahoma State Standards examination and pay the required license fee before a license is granted by the Board.

(b) There is no reciprocity allowance for licensure for the RC/AL license, the RC license or the Adult Day Care License. All out of state licensure applications for these licensure types shall be treated as initial licensures with the exception of individuals who previously passed the NAB RC/AL exam, shall not be required to re-take that exam, however these individuals must provide Proof of having passed that exam.

490:10-1-5. Requirements for a provisional license as a nursing home administrator

(a) To fill a position of ~~long term care~~nursing home administrator that unexpectedly becomes vacant, the Board may grant one (1) provisional license for a single period not to exceed six (6) months. The Board shall not grant another provisional license to fill a vacancy at the same facility for a period of one year after the date the provisional license is granted.

(b) In addition to the general requirements found in this Chapter each applicant for a provisional license shall meet the requirements of this Section.

(c) A provisional license may be granted to a person who does not meet all of the licensing requirements established by the Board, but who:

(1) Has successfully completed a formal program(s) of study and, at a minimum, received a bachelor's degree that meets the requirements set forth in 490:10-1-3.;

(2) Has obtained the services of a currently-licensed Oklahoma long term care administrator to act as an on-site consultant to the provisional licensee;

(3) Has provided the Board with evidence indicating he~~/she~~ has at least two (2) years of experience in a long term care facility;

(4) Has received a passing score on the current Oklahoma State Standards examination; and

(5) Has paid the required fee(s).

(d) The consultant administrator to a provisional licensee must have been employed in a comparable long term care facility in Oklahoma for a minimum of two (2) years.

(e) The consultant administrator to a provisional licensee shall:

(1) Provide direct supervision of the provisional licensee for at least eight (8) hours per week with no more than 10 calendar days lapsing between consultant visits to the provisional licensee's facility; and

(2) Submit monthly evaluation reports on the provisional licensee to the Board no later than the tenth day of each month for the duration of the provisional license.

490:10-1-5.1. Requirements for a provisional license as a residential care/assisted living administrator

There is no provisional license provision for residential care/assisted living administrators or residential care administrators.

490:10-1-5.2. Requirements for a provisional license as an adult day care administrator

There is no provisional license provision for adult day care administrators.

490:10-1-9. Inactive license [REVOKED]

~~(a) A licensee may request, in writing, for the Board to place his/her license on inactive status, and, if the Board approves the requested change in license status from active to inactive, the licensee shall not function in the capacity as a long term care administrator in Oklahoma until the license is reinstated by the Board to active status. Such requests must be received by the Board no less than fourteen (14) calendar days prior to the date of the Board Meeting at which the Board is to consider the request.~~

~~(1) Except as otherwise permitted in this Subchapter, requests by licensees to place his/her license on inactive status on or after after July 1, 2008, such request shall be denied by the Board if the licensee's license has been on inactive status for any longer than one (1) licensing year during the two (2) licensing years preceding the year for which inactive status is being requested.~~

~~(2) If, on or after July 1, 2008, a licensee submits a request for the Board to place his/her license on inactive status, and such request is granted by the Board, the change would be effective the earlier of either:~~

~~(A) The date his/her current license is due to be renewed; or~~

~~(B) The specific date during the current licensing year the licensee requested the change to be effective; and further, either effective date shall be no earlier than the date of the Board Meeting at which the Board acts upon his/her request for the change in license status from active to inactive.~~

~~(b) A licensee whose license is on inactive status will remain on the Board's mailing list, and his/herlicense is eligible for reinstatement from inactive to active status as described in this Chapter.~~

~~(c) In order to place an active license on inactive status, the licensee must, in advance of the expiration date of the current license:~~

~~(1) submit a written request to the Board to have his/her license placed on inactive status, and, if the Board grants the change in status,~~

~~(2) submit the annual inactive license fee as prescribed by the Board at OAC 490:1-7-2.~~

~~(d) A licensee's license may remain on inactive status for a period not to exceed two (2) consecutive licensing years.~~

~~(1) For licensees whose license was placed on inactive status on or before June 30, 2007, the two (2) consecutive licensing years time period does not apply, rather such individuals' licenses may remain on inactive status for a period not to exceed five (5) consecutive licensing years,n beginning with the date on which his/her license was placed on inactive status, and provided that the licensee appropriately requests his/her license remain on inactive status each time the license is due for renewal and such request has been granted by the Board.~~

~~(2) For licensees whose license was placed on inactive status on or after July 1, 2007, the two (2) consecutive licensing years time period shall end on the last day of the licensing year following the licensing year in which his/her license was placed on inactive status, provided that the licensee appropriately requests his/her license remain on inactive status when his/her license is due for renewal and such request has been granted by the Board.~~

~~(e) When applicable, a written request to continue a license on inactive status must be made each year during the annual license renewal period.~~

~~(f) The inactive license fee shall be charged annually each time inactive license status is requested.~~

490:10-1-10. Requirements for reinstatement from inactive status [REVOKED]

~~(a) In addition to the general requirements found in this Chapter each licensee who requests that his/her license be reinstated by the Board from inactive status to active status shall meet the requirements in this Section.~~

~~(b) A licensee who has been granted inactive license status by the Board, and who otherwise meets the qualifications to be granted an active license, may apply to the Board, in writing, requesting that the Board reinstate his/her license from inactive status to active status. Such written request shall be received at the Board offices not later than fourteen (14) calendar days prior to the Board Meeting at which the Board would act on the request. Licensee shall supply or cause to be supplied with or in support of such written application for reinstatement written evidence satisfactory to the Board of the following:~~

~~(1) Receipt of a passing score on the current Oklahoma State Standards examination;~~

~~(2) Completion of twenty-four (24) clock hours of approved continuing education or completion of Administrator University during the licensing year preceding the licensing year for which licensee is requesting reinstatement;~~

~~(3) Payment of the current licensure fee and the status change fee as prescribed by the Board at OAC 490:1-7-2. and any unpaid fees or fines owed to the Board; and~~

~~(4) For those licensees who wish to reinstate their license to active status prior to the next annual license renewal date, the date on which they would like to have their license reinstated by the Board.~~

~~(c) For those licensees who had not completed or cannot provide written evidence verifying completion of the required twenty-four (24) clock hours of Continuing Education Units (CEUs) or completion of Administrator University in the licensing year preceding the licensing year in which his/her license would be reinstated to active status, such individuals have not met the requirements for license reinstatement as established by the Board and his/her license will not be reinstated to active status.~~

~~(d) A licensee who has not reinstated an inactive license to active status within the maximum allowed two (2) consecutive licensing years time limit or within such other length of time, as otherwise delineated within this Chapter, is considered to have abandoned his/her license and the practice of long term care administration, and the Board shall take action to formally vacate his/her license. An individual shall, if he/she wishes to practice long term care administration after failure to reinstate his/her license from inactive to active status, re-apply to the Board and meet current requirements for initial licensure as a long term care administrator.~~

490:10-1-11. Requirements for restoration from suspended status

(a) In addition to the general requirements found in this Chapter, each applicant for restoration of a suspended license shall meet the requirements in this Section.

(b) Individuals seeking restoration of a license that has been suspended must petition and appear, in person, before the Board and provide the Board with written documentation that he~~/she~~ has complied with all terms of the suspension.

(c) The Board, in its sole discretion, may restore a suspended license after the suspension time has elapsed, upon submission of evidence satisfactory to the Board that the conditions responsible for the suspension no longer exist and that no other reasons exist which warrant continued suspension.

(d) Evidence shall include complete documentation attested to under oath and by witnesses of facts that indicate that the conditions responsible for the suspension no longer exist. Letters of recommendations from employees, officers of courts, or respected members of the individual's community may also be submitted.

(e) Petitioners who have been suspended may be required to complete continuing education hours (in addition to those required for license renewal), and/or specific Administrator ~~University~~ In-Training (AIT) modules, and/or the portions of or the entire Administrator University curriculum at the discretion of the Board, at the expense of the applicant.

SUBCHAPTER 3. APPLICATION FOR LONG TERM CARE ADMINISTRATOR LICENSURE

490:10-3-1. Application for initial licensure, licensure by reciprocity/interstate endorsement, or provisional license

(a) Each applicant for licensure as a long term care administrator shall make a verified application on a form furnished by the Board stating the license type for which he is applying and remit a non-refundable application fee as prescribed by the Board at OAC 490:1-7-2.

(b) An application for initial license, for licensure by reciprocity/interstate endorsement or for a provisional license is valid for one year after the date of receipt by the Board.

(c) An applicant shall be deemed to have abandoned the application if he~~/she~~ does not fulfill all requirements for licensure within one year from the date of application.

(d) An application for Administrators University (AU) may be used as an application for initial licensure. However, if this application is over a year old when all requirements have been met, the Board does require that this application be updated. Such an application shall be deemed abandoned if it has not been updated within the time restrictions for licensure.

(~~d~~e) An application for licensure submitted subsequent to the abandonment of a former application shall be treated as a new application and the applicant must meet current requirements for licensure as a long term care administrator.

(~~e~~f) Upon receipt of an application for licensure, the Board shall request that a criminal history background check be performed on the individual requesting licensure. If the results of a criminal background check reveal that the applicant has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude, the individual's application for licensure may be disapproved and no further action will be taken on the application.

(~~f~~g) An application ~~shall be determined~~is complete when:

(1) the application fee prescribed by the Board at OAC 490:1-7-2. has been remitted and deposited to the Board's credit with the State Treasurer;

(2) all documentation required to be submitted along with or in support of the application has been received by the Board;

(3) the applicant has met all other requirements for an initial license, for licensure by reciprocity/interstate endorsement or for a provisional license, as applicable, and

(4) the results of the criminal background check have been received by the Board .

(~~g~~h) Upon verification of compliance with all requirements, an applicant shall be eligible for consideration by the Board for purposes of licensure as a long term care administrator.

(~~h~~i) ~~Applicants eligible for licensure shall pay a license fee as prescribed by the Board at OAC 490:1-7-2.~~ The fee is due and payable on notice of eligibility for licensure. A license will not be issued until said fee is paid in full to the Board.

~~(i) Upon payment of the license fee, the applicant's request for licensure shall be presented to the Board for consideration at the next Board meeting. Applicants are encouraged to attend the Board meeting.~~

(j) The certificate of license shall be presented at the Board meeting when it is approved, if possible, or mailed to the applicant within seven (7) working days of Board's formal grant of license to the applicant. Applicants are encouraged to attend the Board meeting.

(k) A temporary license may also be applied for in accordance with the provisions in paragraph 10-1-3.1(d) at the discretion of the applicant.

490:10-3-2. National ~~("NAB")~~ examination

(a) An individual applying for an initial license must receive a passing score on the applicable exam, either the ~~national long term care~~ Nursing Home~~administrator~~Administrator ("~~NAB~~NHA") examination or the Residential Care/Assisted Living ("RC/AL") exam administered by the National Association of Long Term Care Administrator Boards (NAB)(neither is applicable to Residential Care or Adult Day Care administrator applicants). The Board may waive this requirement if the applicant provides evidence that he~~/she~~ has successfully passed the appropriate NAB~~"NAB~~" examination at a previous time. The NAB's RC/AL (Residential Care/Assisted Living) exam does not meet the requirement for a nursing home administrator license.

(b) An individual applying for licensure by reciprocity/licensure by interstate endorsement ~~or applying for reinstatement of a license from inactive status to active status~~ shall not be required to sit for and receive a passing score on the NAB's NHA~~"NAB"~~ examination if the applicant provides evidence that he~~/she~~ has successfully passed it at a previous time.

(c) An individual applying for a provisional license shall not be required to take the ~~"NAB"~~"NHA" examination.

(d) An applicant who fails to pass the ~~"NAB"~~appropriate NAB examination may re-take the examination four (4) additional times , after which (5 failures) he~~/she~~ w~~ould~~will have to petition the Board, on each subsequent occasion, to allow him~~/her~~ to sit for the examination. The Board, after reviewing the merits of each such petition, will either allow or deny the petition, and if the decision is to deny the petition, may propose other remedies that may increase the potential for the individual to successfully pass this examination on a future attempt (i.e. continuing education, NAB examination study/refresher course, etc.) prior to applicant re-petitioning the Board to allow applicant to re-take the ~~NAB~~ examination.

(e) Fees for ~~the~~all national ~~examination~~examinations shall be in an amount prescribed by and are due and payable to the NAB or its authorized designee.

490:10-3-3. State Standards examination

(a) An individual applying for an initial license, licensure by reciprocity, or a provisional license, ~~or reinstatement of a license from inactive status to active status~~ must, prior to the issuance of the respective license ~~or prior to the reinstatement of an inactive license to active status~~, sit for and receive a passing score on the appropriate State Standards examination for the license for which he is applying. There shall be a separate examination for each type of license. First time applicants for initial licensure shall have received a passing score on the State Standards examination within the ~~sixty (60)~~ twenty-four(24)-months preceding the month in which the Board ~~would~~will be taking action to license the applicant, and if applicant is not licensed during this ~~60~~24-month time period, applicant ~~would~~will have to pay all required fees and re-take the examination prior to any future licensing attempts. Applicants for licensure by reciprocity/interstate endorsement, applicants for a provisional license~~, licensees seeking reinstatement of his/her license from inactive status to active status~~ and applicants for initial licensure who have previously held

an Oklahoma long term care administrator license must, prior to the issuance of the respective license ~~or reinstatement of a license from inactive to active status~~, sit for and successfully pass the current State Standards examination.

(b) The application and supporting documents required by the Board for an individual to sit for the State Standards examination must be completed and on file with the Board at least thirty (30) calendar days prior to the announced examination date.

(c) At least ten (10) calendar days prior to the scheduled examination, each applicant eligible to sit for the examination shall be notified of the time and place.

(d) The Board shall determine a passing score for the State Standards examinations, and shall apply such score uniformly to all persons taking the examinations.

(e) ~~To meet the requirements of the State Standards examination, the applicant shall receive a passing score~~. The applicant must have received a passing score on the State Standards examination to be considered for licensure.

(f) An applicant who fails to pass ~~the~~a State Standards examination may re-take the examination three (3) additional times (4 failures). An applicant who fails each of his~~/her~~ first four (4) attempts to pass this examination will be required to petition and personally appear before the Board before ~~the~~y may apply to re-take the examination. The Board, in its sole discretion, may require that the applicant undergo additional training or education before permitting the applicant to sit for the examination a 5th (or any subsequent) time. Should the Board permit an applicant to sit for the examination a 5th time, and should applicant fail to pass the examination, applicant shall wait for a period of time of not less than one-hundred-eighty (180) calendar days before petitioning the Board to allow him~~/her~~ to again sit for the examination. Applicant shall personally appear before the Board, and the Board, after its consideration of the merits of the petition, may allow applicant to re-take the examination, may deny the application, or it may impose other remedies prior to further consideration of the petition.

(g) Fees for the State Standards examination shall be in an amount prescribed by the Board at OAC 490:1-7-2.

490:10-3-4. Admission to the State Standards and national examinations

(a) Upon review of applicant qualifications by Board staff, applicants meeting Board requirements are notified of ~~his/her~~their eligibility to sit for the State Standards examination. Upon successful completion of Administrator University and a Board-approved AIT program, applicants for initial licensure as nursing home administrators become eligible to sit for the ~~national~~NAB's (~~NAB~~"NHA") examination. In all cases, except Residential Care and Adult Day Care where a NAB exam is not required, taking the appropriate NAB exam is the last step in the process and all other requirements must be met prior to being approved to sit for the national examination.

(b) Applicants for licensure by reciprocity/licensure by interstate endorsement, for a provisional license and for a certification as an assistant administrator (nursing facility only)~~or for reinstatement of his/her Oklahoma license from inactive to active status~~ are eligible to sit for the State Standards examination on the next scheduled testing date, or pay the appropriate fee for an unscheduled testing date.

(c) All applicants shall be required to agree not to compromise or attempt to compromise the NAB or the Oklahoma State Standards examination by disclosing any information, questions, or answers on these examinations. This agreement shall be documented on a "Test Confidentiality and Attestation" form provided by the Board. Prohibited activities which might compromise these examinations include, but are not limited to:

(1) reproducing or assisting another by any means to reproduce or attempt to reproduce any portion of the examination, by any means, including electronic transmission or memorization;

(2) having any person (whether paid or unpaid) take the examination on their behalf; engaging in face-to-face, written, or electronic discussions, including on blogs, listservs, chat rooms, email, or any social media application, concerning the content of the examination for personal, commercial, or other reasons; and

(3) selling, distributing, buying, receiving or having unauthorized possession of any portion of the examination, specifically any questions or answers.

(d) Failure to observe the confidentiality of a NAB Examination or an Oklahoma State Standards Examination may result in disciplinary action by the Board as outlined in OAC 490:10-5-3(a)(23).

490:10-3-5. Application for licensure renewal

(a) Each applicant for a renewal of a license~~, whether the status of such license is 'active' or 'inactive',~~ shall:

(1) File an application, on the form and in the manner as prescribed by the Board, prior to the expiration date of the current license.

(2) Submit evidence, upon request, satisfactory to the Board that the applicant has successfully completed the hours of continuing education as required for license renewal.

(3) Not have been reported to the Board pursuant to 68 O.S. Section 238.1 for non-compliance with State income tax requirements. If a licensee whose license is on 'active' status is found to be in non-compliance with these State income tax requirements:

(A) such license shall not be renewed; and

(B) licensee shall not have recourse against the Board for non-renewal of his~~/her~~ license.

(4) Submit to a criminal background check. At the time of annual license renewal, the Board will randomly select not less than a five (5%) percent sample from all renewed licenses~~, including in the sample licenses on 'active' and 'inactive' status,~~ against which sample the Board will perform criminal background checks. If the results of a criminal background check reveal that a licensee has been convicted of or pleaded guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude,

the licensee will be subject to Board sanction(s), including license suspension or revocation.

(5) Remit the Annual License Renewal fee as prescribed by the Board at OAC 490:1-7-2 and ensure all outstanding fees and fines owed to the Board have been paid. If a licensee has outstanding fees or fines owed to the Board, licensee shall not be permitted to renew his~~/her~~ license until the same have been paid in full to the Board, provided that such payment is made prior to the expiration of the current license. If such payment is not made prior to the expiration date of the current license, licensee no longer holds a valid license and licensee is considered to have abandoned his~~/her~~ license and the practice of long term care administration, and the Board shall take action to formally vacate his~~/her~~ license. If this occurs, and if he~~/she~~ wishes to resume the practice of long term care administration, he~~/she~~ must re-apply to the Board, fully satisfy any/all outstanding fees or fines owed to the Board, and meet current requirements for initial licensure as a long term care administrator.

(b) A suspended license is an 'active' license against which the Board has taken disciplinary action and suspended licensee's ability to engage in the practice of long term care administration. As such, a suspended license shall be subject to expiration and shall be renewed as provided in this Section. Renewal of a suspended license shall not entitle the licensee to engage in the practice of long term care administration until the suspension is removed by the Board and the privilege to practice long term care administration is restored by the Board.

(c) It is the personal responsibility of each licensee to renew his~~/her~~ license prior to the expiration date of the current license and, further, to ensure that the information he~~/she~~ provides for purposes of renewal is true and accurate.

(d) If the license is not renewed by the last day of the current licensing year, a late fee of $100 per week shall be assessed wherein the first day equates to the first week (e.g., week 2 starts on the 8th day...) up until the first Board meeting of the year when all non-renewed~~thelicense~~licenses at that point shall be declared~~lapses~~lapsed by the Board and ~~the~~those~~licensee~~licensees ~~is~~shall be considered to have abandoned ~~his/her~~their~~license~~licenses and ~~does~~do not hold a valid license as of 12:01 a.m. ~~the first~~on the day after expiration~~of the ensuing licensing year~~ and shall not hold a position or function in the capacity as a long term care administrator in Oklahoma.

(e) ~~All individuals who failed to timely renew his/her license by the renewal deadline~~ All lapsed licensees or certificate holders, following this declaration, (if he wishes to resume the practice of long term care administration) must re-apply to the Board and meet current requirements for initial licensure as a long term care administrator, provided that the individual petitioner can provide evidence to the Board that he complied with all lawful requirements for the retention or renewal of the license.

~~(1) will be notified of the non-renewal, and such notification will include notification of the date, time and location of the Board meeting at which the Board will be taking formal action to vacate all non-renewed licenses; and~~

~~(2) will, at the Board meeting at which the Board will be taking formal action to vacate non-renewed licenses, be afforded the opportunity to petition the Board for its consideration of possible reinstatement of the individual's lapsed license, provided that the individual petitioner can provide evidence to the Board that he/she complied with all lawful requirements for the retention or renewal of the license.~~

(f) All non-renewed licenses shall be presented to the Board at a meeting of the Board. The Board shall take formal action at that meeting to vacate all non-renewed licenses.

(g) Following this Board meeting, a listing of all licenses vacated by the Board shall be submitted to the Oklahoma State Department of Health, Long Term Care Services Division.

(h) An individual who practices after the expiration (lapse) of his~~/her~~ license is practicing without a license and is subject to disciplinary action and/or sanctions as determined by the Board.

490:10-3-6. ~~Licensure~~ Provisional licensure term

A provisional license shall expire six (6) months from the effective date of the provisional license and shall not be renewed. ~~All other licenses shall expire on December 31 following issuance and may be renewed annually thereafter.~~

SUBCHAPTER 5. DISCIPLINE

490:10-5-3. Disciplinary action

This subchapter applies to all long term care administrators.

(a) The Board may take action against an unlicensed person acting as administrator, and may deny an initial application; deny a renewal application; suspend or revoke a long term care administrator license or certification, a provisional license, a preceptor certification, an assistant administrator's certification, or an AIT internship training permit; warn; censure; reprimand; impose administrative fines or probation or use other remedies that may be considered to be less than suspension or revocation upon satisfactory evidence of any of the following:

(1) Obtaining or attempting to obtain a license or certificate by fraud, deceit, or misrepresentation.

(2) Conviction of or a plea of guilty or nolo contendere to any felony or to any misdemeanor involving moral turpitude.

(3) Use of legally-prescribed or illegal drugs (narcotics or other dangerous drugs) or alcohol or the dependence on legally-prescribed drugs or illegal drugs or alcohol, or gambling, if such use or dependence, or such gambling, or the behaviors related to or resulting from such use or dependence compromise the individual's ability or capacity to fulfill his~~/her~~ duties or responsibilities in the long term care facility, or if the same constitute(s) a criminal offense.

(4) Commitment to a mental institution or judicial determination of incompetence.
(5) Gross negligence, or negligence that constitutes a danger to the health, welfare or safety of the residents or the public.
(6) Physical or verbal abuse of a resident or misappropriation of a resident's funds or property; failure to report an allegation of physical or verbal abuse of a resident or misappropriation of a resident's funds or property to appropriate state authorities as required by law.
(7) Fraudulent, deceptive or dishonest conduct in the management of a long term care facility, or other conduct unbecoming to a person licensed or subject to licensure under this law when, in the judgment of the Board, such conduct is detrimental to the best interest of the long term care profession and the public.
(8) Except as otherwise permitted in this Chapter, concurrently serving or acting as the administrator of more than one nursing facility; or exceeding the conditions placed on administrators of ICFs/MR with 16 beds or less as stated in this Chapter; or otherwise serving as an administrator beyond the scope of their licensed authority.
(9) Failure to comply with State or federal requirements applicable to the facility.
(10) Failure to comply with rules and requirements for administrators established by the Board, including the Administrator Code of Ethics and Administrator Responsibilities adopted by the Board.
(11) Evidence that the administrator has paid, given, has caused to be paid or given or offered to pay or to give to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of ~~nursing~~long term care facility patronage.
(12) Intentional retaliation or discrimination against any resident or employee for contacting or providing information to any State official, licensing agency or regulatory agency.
(13) Failure to provide verification of continuing education hours.
(14) Sexual abuse, sexual harassment, or sexual exploitation of any resident, employee, trainee, volunteer, consultant, or visitor to the facility in which the licensee practices.
(15) Falsification of any records relating to the operation of a long term care facility; falsification of records submitted to the Board or any other state or federal agency; falsification of a resident's records, or causing a resident's records to be falsified.
(16) Use of the licensee's professional status, title, position, or relationship as a long term care facility administrator to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member, employee, visitor, or any person served by or doing business with the facility that employs the administrator.
(17) Interfering with, refusing to participate in, or impeding any investigation, inspection, or disciplinary proceeding authorized by Statute.
(18) Violation of any disciplinary order, consent agreement, term of suspension, condition, stipulation, or any other limitation imposed on the licensee by the Board.
(19) Unlicensed practice ~~by an applicant for licensure~~; practice on a revoked, suspended, or lapsed~~, or inactive~~ license; or practice on a provisional license without the use of an on-site consultant or as a Certified Assistant Administrator without the oversight of an Administrator-of-Record.
(20) Failure to pay fees or fines established or imposed by the Board.
(21) Knowingly aiding, assisting, or advising a person to unlawfully practice as an administrator without a required license.
(22) Failure to adequately supervise an assistant administrator and/or failure to assure that the assistant administrator complies with state and federal requirements applicable to the facility.
(23) Conduct that violates the security of any licensure examination materials.
(24) Coercion or harassment, or the attempt to coerce or harass, or the use of any other form of uninvited solicitation directed toward a resident of a long term care facility or toward a member of the resident's family or the resident's guardian for the purpose of attempting to persuade the resident to change long term care facilities.
(25) Failure to notify the Board of a change of name, business or personal mailing address(es), or change of employment within fifteen (15) calendar days of the occurrence.
(26) Coercion or harassment of, or the attempt to coerce or harass, a member of the Board, a Board employee or an authorized agent or representative of the Board as related to any matter or issue over which the Board has jurisdiction.

490:10-5-5. Summary suspension

(a) The Board may order a summary suspension of an administrator's license/certification or an intern/trainee Administrator-In-Training internship permit, if, in the course of an investigation, it is determined that ~~a licensee or an AIT intern/trainee~~the respondent has engaged in conduct of a nature that is detrimental to the health, safety, or welfare of one-or-more residents or ~~of~~to the health, safety or welfare of the public, or detrimental to the profession of long term care administration, and which conduct necessitates immediate action to prevent further harm.
(b) The Board shall be charged with making the determination that an emergency exists and that a summary suspension is necessary, and shall incorporate in its Order that public health, safety or welfare requires emergency action.
(c) Proceedings for revocation or other appropriate action shall be promptly instituted and a determination promptly rendered by the Board.

SUBCHAPTER 7. ADMINISTRATOR UNIVERSITY

490:10-7-3. General provisions

(a) The Board is committed to providing learning opportunities to individuals interested in pursuing a career in long term care administration, and enhancing the development of licensed administrators. To further this objective, the Board has established an Administrator University (AU) for nursing home administrator applicants with curriculum designed specifically to provide individuals with knowledge and skills necessary to be a successful nursing home and/or ICF/MR administrator. The Board will periodically review and approve or establish training for residential care/assisted living and adult day care administrators as deemed necessary.

(b) Effective August 1, 2006, individuals applying to become ~~an~~nursing home ~~administrator~~administrators shall successfully complete Administrator University prior to being licensed.

(c) Administrators who are already licensed in the State of Oklahoma as a nursing home administrator may enter Administrator University for enhanced training.

(d) At the Board's discretion, specific classes or the entire Administrator University curriculum may be imposed as a ~~remedy~~penalty for the violation of rules and/or standards established by the Board.

(e) A fee prescribed by the Board at OAC 490:1-7-2 shall be submitted with the application form prior to admission to Administrator University.

(f) An~~Applicant~~applicant for licensure who successfully ~~complete~~completes Administrator University (AU) will not have to repeat Administrator University ~~is~~if he~~/she~~ is successfully licensed in Oklahoma as a long term care administrator within ~~sixty (60)~~twenty-four (24) months ~~of~~after the month he~~/she~~ first began attending AU classes.

(g) If applicant fails to become licensed as an Oklahoma long term care administrator during this ~~60~~24-month time frame, applicant ~~would~~will have to pay all applicable fees and repeat Administrator University prior to any future licensing attempts.

SUBCHAPTER 8. ADMINISTRATOR-IN-TRAINING (AIT) INTERNSHIP PROGRAM FOR NURSING HOME ADMINISTRATORS

490:10-8-2. Application

(a) The applicant shall submit to the Board an application, which shall contain such information as name, education, employment history, information pertaining to moral character, any other information the Board requires, and an affidavit stating that the applicant, if granted a license, will obey the laws of the State and the rules of the Board, and will maintain the honor and dignity of the profession.

(b) To satisfy the Board's requirement for evidence verifying educational degree(s) conferred or hours of post-secondary education completed, the applicant shall meet the requirements found at OAC 490:10-3-1.1.

(c) The applicant will be subjected to a criminal background check as described in this Chapter prior to beginning an AIT internship.

(d) A fee as prescribed by the Board at OAC 490:1-7-2 shall be submitted with the application.

(e) An~~Applicant~~applicant who successfully ~~complete~~completes a Board-approved AIT internship will not have to repeat the internship if he~~/she~~ is successfully licensed as a long term care administrator in Oklahoma within the ~~sixty (60)~~twenty-four (24) months following the month in which he~~/she~~ first began his~~/her~~ internship, and if applicant fails to secure licensure within this ~~60~~ 24month time frame, applicant ~~would~~ will have to pay all applicable fees and serve a new AIT internship prior to any future licensing attempts.

490:10-8-3. Training permit

(a) In order for a training permit to be issued, ~~it is a requirement that~~ the facility or facilities at which the AIT internship is to be served must be:

(1) licensed by the Oklahoma State Department of Health as a long term care facility; and

(2) in substantial compliance with the rules and regulations governing licensure and operation of long term care facilities.

(b) After approval of the proposed AIT internship, the Board shall issue an applicable AIT internship training permit to the applicant (the 'intern/trainee'), one that shall be valid for a maximum one-year time period beginning on the date the permit is issued.

(c) Should the intern/trainee not maintain acceptable standards and submit the required reports or cause the same to be submitted, the Board shall place the intern/trainee on probation or may rescind the AIT internship training permit.

490:10-8-4. Preceptor selection

(a) From a list of preceptors 'certified' by the Board, the intern/trainee may indicate his~~/her~~ choice.

(b) It shall be the responsibility of the Board to contact a preceptor to determine if the preceptor will accept the applicant.

(c) Once a preceptor accepts an AIT intern/trainee, any subsequent changes must be approved by the Board.

(d) The preceptor shall notify the Board of the date of acceptance and the date of any discontinuance of AIT internship.

490:10-8-5. Preceptor qualifications

(a) A licensed administrator wishing to be certified as a preceptor for the AIT program may apply to the Board on the form and in the manner prescribed by the Board.

(b) To be certified as a preceptor, the applicant shall:

(1) exemplify the highest ethical and professional standards as an administrator for at least the preceding twenty-four (24) consecutive months;

(2) be licensed and be able to document employment as:

(A) an Oklahoma long term care administrator for at least twenty-four (24) ~~consecutive~~ months of the preceding sixty (60) months; OR

(B) an Oklahoma long term care administrator for at least twenty four (24) of the preceding sixty (60) months and supervising administrators in multiple locations wherein an AIT could be appropriately trained under his direct and/or indirect supervision, e.g., as a regional supervisor or operations officer with multiple homes;

(3) successfully complete preceptor training that meets the requirements established by the Board; and

(4) ~~have~~ has not been the subject of any action by any Board or licensing authority which resulted in formal reprimand, suspension or revocation of license, or in an administrative fine within the preceding twenty-four (24) consecutive months.

(c) If the Board imposes a sanction against an administrator, such administrator may not be eligible to be certified as a preceptor for twenty-four (24) months from the date of the sanction, as specified in the sanction's final or agreed order.

(d) Preceptors shall be certified for a period of ~~twenty-four (24)~~ thirty-six (36) months if active (who trained at least one trainee during the first twenty four (24) months of their preceptorship) or twenty four (24) months if inactive.~~and~~ Preceptors may be re-certified at the discretion of the Board. There shall be an automatic extension of the certification period for any preceptor whose certification expires while overseeing an AIT intern/trainee, provided that the preceptor otherwise meets all other requirements for certification and those governing assignment of a preceptor to an AIT intern/trainee. The extension shall be granted to the end of the training period for the particular intern/trainee.

490:10-8-5.1. Preceptor designation/assignment to an AIT intern/trainee

In order to be designated/assigned as the preceptor for an AIT training program, a 'certified' preceptor must:

(1) be either the full-time administrator-of-record of the facility at which the AIT intern/trainee would be completing his~~/her~~ internship rotation, OR a licensed administrator and the direct supervisor of the administrators(s)-of-record at the facility(s) at which the AIT intern/trainee would be completing his internship rotation;

(2) agree to give the intern/trainee an opportunity to observe and take part in the managerial tasks associated with the operation of ~~the~~a facility, acquaint the intern/trainee with the organization and operation of all the various departments of the facility by permitting his~~/her~~ observation and/or participation in department activities subject to the training program approved by the Board;

(3) hold regular meetings and/or discussions with the intern/trainee to discuss progress to date, consider refinements to hours spent in each module/domain of practice (in preparation for the NAB NHA exam), and interview him~~/her~~ upon completion of the internship to mutually discuss noted strengths and weaknesses; and

(4) upon satisfactory completion of the program, provide the Board a letter certifying the completion of the required internship hours.

490:10-8-6. Curriculum for nursing home administrator AITs

(a) The preceptor, in conjunction with the AIT intern/trainee, will assess and evaluate the background, training and experience of the intern/trainee to determine specific areas of concentration within the domains of practice and departmental rotations.

(b) The preceptor will submit to the Board, prior to or within the first week of an AIT internship, an individualized curriculum for the intern/trainee, one that meets the Board's AIT internship requirements. The Board requires that the training be carried out in modules as delineated in the training materials.

490:10-8-7. Module reports for nursing home administrator AITs

(a) At the conclusion of each module of training, the preceptor will submit to the Board an evaluation of progress on a form approved by the Board for that purpose.

(b) Module reports must be received in the Board's office within ten (10) working days of completion of the module.

490:10-8-8. Preceptor's final report

(a) At the end of the approved AIT internship, the preceptor will submit a final report and an evaluation of the intern/trainee on the form(s) and in the manner as prescribed by the Board. The preceptor will sign the form(s). The form(s) will indicate whether or not the intern/trainee has satisfactorily completed the prescribed internship program.

(b) The reports will be filed in the intern/trainee's file in the Board's office and will become a record in the individual's file.

(c) Preceptors for nursing home AIT candidates shall be awarded 3 CEUs per each trainee completed (awarded in the year the training was completed) and may earn up to 9 CEUs in this manner per calendar year.

490:10-8-10. Change of status and discontinuance

(a) If the intern/trainee wishes to change to another preceptor, or discontinues the training, the intern/trainee must notify the Board prior to making this change.

(b) The notification requires the name of the intern/trainee and preceptor, the change requested, the effective date, reasons for the change, and any other information that the Board may request. Either the intern/trainee or the preceptor must sign the notification.

(c) If a substandard quality of care finding in a facility is upheld against an administrator who is a certified preceptor working with an intern/trainee, the Board ~~shall assist the intern/trainee in finding a new preceptor.~~shall evaluate the situation and determine if there is a need to assist the intern/trainee in finding a new preceptor and may, at its sole discretion, direct that a new preceptor be assigned to the AIT.

490:10-8-11. Dismissal from program

(a) The preceptor will inform the intern/trainee of his ~~or her~~ performance as the program progresses.

(b) If the intern's/trainee's performance is not acceptable, the preceptor will so inform him ~~or her~~, and the intern/trainee will be given an opportunity to correct the deficiencies.
(c) If the intern/trainee does not correct the deficiencies, the preceptor will notify Board staff of the same, and a member of the Board's staff will notify the intern/trainee that he ~~or she~~ will be dismissed from the program.
(d) If the intern/trainee violates any of the Board's rules or regulations, or if the intern/trainee violates any of the policies or procedures of the facility(ies) at which he~~/she~~ is serving his~~/her~~ AIT training, the preceptor or authorized representatives of the facility(ies) will notify the Board's staff of the same, and the Board staff will notify the intern/trainee that he~~/she~~ can no longer participate in the program.
(e) The intern/trainee may appeal dismissal from the program by petitioning the full Board for a formal hearing.

490:10-8-13. AIT time on the job
(a) The intern/trainee shall serve a 560 hour internship, unless in the opinion of the Board or preceptor, the intern/trainee requires additional hours of training; or unless the hours required to complete the internship, are otherwise reduced by formal action of the Board.
(b) An internship that has been discontinued due to a period of active duty military service of the intern/trainee shall be allowed to be completed within one (1) year after the intern/trainee has completed his~~/her~~ military service obligation. If this time frame cannot be met by the intern/trainee, the previously-started internship shall be cancelled by the Board and he~~/she would~~will have to reapply to the Board for a new internship and pay all applicable fees. If an internship has been discontinued due to active duty military service of the preceptor, the Board will work with the intern/trainee to secure another preceptor.
(c) An internship that has been discontinued for any purpose other than military service, and such discontinuance exceeds one year from the date of the beginning of the discontinuance, that internship will be cancelled by the Board, and the AIT intern/trainee shall be required to reapply to the Board for a new internship and pay all applicable fees.
(d) Only one discontinuance is allowed.
(e) Internships shall be completed in not less than fourteen (14) consecutive weeks nor more than twelve (12) consecutive months.
(f) This section shall be subject to the requirements of any other provisions of law.
(g) The intern/trainee must complete the internship in a facility or facilities that is (are) currently in substantial compliance with the rules and regulations governing long term care facilities in Oklahoma.

490:10-8-14. AIT Internship exempt status
The Board, in its sole discretion, may waive the AIT internship requirement entirely, or portions thereof, for those applicants who show evidence of the following:
(1) Prior successful completion of a formal internship program that meets or exceeds Board requirements, such as in another state or in a NAB accredited long term care degree program.
(2) A registered nurse (RN) or licensed practical nurse (LPN) with a minimum of two (2) years experience in supervision in a licensed nursing facility or other long term care facility may, at the sole discretion of the Board, be exempt from the nursing department module or portions thereof. Any such exemption granted by the Board shall not lessen the total number of hours that the intern/trainee must serve to complete the required number of hours for the internship.

SUBCHAPTER 13. STANDARDS FOR ADMINISTRATORS

490:10-13-1. Administrator Code of Ethics
(a) The Board is committed to ethical professional conduct and therefore adopts the following standards to establish and maintain a high degree of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of long term care administrators. All long term care administrators and AITs shall be encouraged to participate in their professional association, the American College of Health Care Administrators (ACHCA and often referred to as "the college") as a means of continually improving themselves as long term care professionals and another source for CEUs.
(b) The American College of Health Care Administrators Code of Ethics is adopted as follows:
(1) Preamble: The preservation of the highest standards of integrity and ethical principles is vital to the successful discharge of the professional responsibilities of all long-term health care administrators. This Code of Ethics has been promulgated by the American College of Health Care Administrators (ACHCA) in an effort to stress the fundamental rules considered essential to this basic purpose. It shall be the obligation of members to seek to avoid not only conduct specifically proscribed by the code, but also conduct that is inconsistent with its spirit and purpose. Failure to specify any particular responsibility or practice in this Code of Ethics should not be construed as denial of the existence of other responsibilities or practices. Recognizing that the ultimate responsibility for applying standards and ethics falls upon the individual, the ACHCA establishes the following Code of Ethics to make clear its expectation of the membership.
(2) Expectation I: Individuals shall hold paramount the welfare of persons for whom care is provided.
(A) Prescriptions: The Health Care Administrator shall:
(i) Strive to provide to all those entrusted to his or her care the highest quality of appropriate services possible in light of resources or other constraints.
(ii) Operate the facility consistent with laws, regulations, and standards of practice recognized in the field of health care administration.

(iii) Consistent with law and professional standards, protect the confidentiality of information regarding individual recipients of care.

(iv) Perform administrative duties with the personal integrity that will earn the confidence, trust, and respect of the general public.

(v) Take appropriate steps to avoid discrimination on the basis of race, color, sex, religion, age, national origin, handicap, marital status, ancestry, or any other factor that is illegally discriminatory or not related to bona fide requirements of quality care.

(B) Proscription: The Health Care Administrator shall not:

(i) Disclose professional or personal information regarding recipients of service to unauthorized personnel unless required by law or to protect the public welfare.

(3) Expectation II: Individuals shall maintain high standards of professional competence.

(A) Prescriptions: The Health Care Administrator shall:

(i) Possess and maintain the competencies necessary to effectively perform his or her responsibilities.

(ii) Practice administration in accordance with capabilities and proficiencies and, when appropriate, seek counsel from qualified others.

(iii) Actively strive to enhance knowledge of and expertise in long-term care administration through continuing education and professional development.

(B) Proscriptions: The Health Care Administrator shall not:

(i) Misrepresent qualifications, education, experience, or affiliations.

(ii) Provide services other than those for which he or she is prepared and qualified to perform.

(4) Expectation III: Individuals shall strive, in all matters relating to their professional functions, to maintain a professional posture that places paramount the interests of the facility and its residents.

(A) Prescriptions: The Health Care Administrator shall:

(i) Avoid partisanship and provide a forum for the fair resolution of any disputes which may arise in service delivery or facility management.

(ii) Disclose to the governing body or other authority as may be appropriate, any actual or potential circumstance concerning him or her that might reasonably be thought to create a conflict of interest or have a substantial adverse impact on the facility or its residents.

(B) Proscriptions: The Health Care Administrator shall not:

(i) Participate in activities that reasonably may be thought to create a conflict of interest or have the potential to have a substantial adverse impact on the facility or its residents.

(5) Expectation IV: Individuals shall honor their responsibilities to the public, their profession, and their relationships with colleagues and members of related professions.

(A) Prescriptions: The Health Care Administrator shall:

(i) Foster increased knowledge within the profession of health care administration and support research efforts toward this end.

(ii) Participate with others in the community to plan for and provide a full range of health care services.

(iii) Share areas of expertise with colleagues, students, and the general public to increase awareness and promote understanding of health care in general and the profession in particular.

(iv) Inform the ACHCA Standards and Ethics Committee of actual or potential violations of this Code of Ethics, and fully cooperate with the ACHCA's sanctioned inquiries into matters of professional conduct related to this Code of Ethics.

(B) Proscription: The Health Care Administrator shall not:

(i) Defend, support, or ignore unethical conduct perpetrated by colleagues, peers or students.

(c) The Board adopts the following as an addition to the code of ethics: Administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator.

(d) Licensees shall place a copy of the Administrator Code of Ethics approved by the Board in a conspicuous location in a public area in the place of business requiring such license.

490:10-13-2. Administrator responsibilities

(a) It is the responsibility of the long term care administrator, as the managing officer of the facility, to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations. The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(b) Long term care administrators licensed/certified by the Board shall adhere to the Administrator Code of Ethics as adopted by the Board.

(c) ~~Long term care~~ Nursing home administrators licensed by the Board shall not concurrently serve as the administrator-of-record of more than one long term care facility except as otherwise permitted in this Chapter. A ~~Long Term Care~~licensed nursing home~~Administrator~~administrator may serve as the administrator of more than one intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16), only if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed the lesser

of six (6) facilities or total licensed capacity of sixty-four (64) beds.

(d) A long term care administrator licensed/certified by the Board must devote at least one-half (1/2) of such person's working time to on-site, on-the-job supervision of a long-term care facility at which he~~/she~~ is listed as being the Administrator-of-Record. As used herein, 'working time' is defined as being a full-time employee scheduled to work forty (40) hours per week. The administrator's working time on-site at the facility shall be distributed throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. This requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF/MR-16), or in an ALF or RCF when otherwise legally authorized to be the administrator of more than one such facility, and shall not apply to administrators governed under OAC 490:10-13-3.(g).

(e) Every person licensed/certified as an administrator and designated the "Administrator-of-Record" shall display the appropriate "Certificate of" or "License" in a conspicuous place in the facility or place of business requiring such license/certification.

(f) Each licensed/certified administrator shall notify the Board, in writing, within fifteen (15) calendar days following the change of~~e~~ his~~/her~~ name, business and/or personal mailing address, change in employment or change in employment status, on the form and in the manner as prescribed or as may be prescribed by the Board. The Board will assess a late fee as prescribed at OAC 490:1-7-2 if it is determined that the administrator failed to provide current contact information within this fifteen day period.

(g) Upon receipt of satisfactory evidence that a ~~licensee's~~ "Certificate" or ~~of~~ "License" has been lost, mutilated, or destroyed, the Board may issue a duplicate replacement license upon payment of a fee as prescribed by the Board at OAC 490:1-7-2.

(h) To change his~~/her~~ name on a "Certificate of License", the licensee must provide legal proof of the name change (e.g., copy of marriage certificate, divorce decree, etc.) before a replacement "Certificate of License" will be issued.

(i) An administrator shall not knowingly initiate contact with an individual currently residing in a long term care facility, or knowingly initiate contact with the family or guardian of an individual currently residing in a long term care facility, for the purpose of attempting to persuade a change in that individual's residence to another long term care facility.

(j) An administrator shall not knowingly solicit, or permit an employee to solicit clients for his~~/her~~ long term care facility through coercion or harassment. If an administrator has knowledge of such actions by an employee, the administrator shall take such steps as are reasonable and necessary to stop such conduct.

(k) An Administrator, or applicant for Administrator licensure/certification, in connection with a license /certificate application or an investigation conducted by the Board or an investigation conducted by the Oklahoma State Department of Health, the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, or any other agency of the State or federal government having regulatory responsibility over or relating to the delivery of care to persons in a facility operated or managed by the Administrator, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misrepresentation known by the Administrator or applicant for licensure/certification to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Board or such government agency or any designated representative thereof.

490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two (2) or more licensed long term care (nursing) facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals is/are employed in Assistant Administrator capacities

(a) The Administrator-of-Record is responsible for ensuring that all minimum requirements delineated herein relating to individuals who wish to serve in the capacity of Assistant Administrator are met prior to the delegation of duties and responsibilities to such individual.

(b) The Administrator-of-Record shall provide qualified individuals serving as an Assistant Administrator with adequate authority and responsibility to administer those aspects of the operations of the facility that are to be delegated to them, including the authority to act in an emergency.

(c) The Administrator-of-Record shall clearly, and in writing, develop a formal job description for the position of Assistant Administrator, wherein the duties and responsibilities of the individual serving as an Assistant Administrator are clearly delineated.

(d) The Administrator-of-Record shall provide supervision, training and direction to the Assistant Administrator and delegate only those duties and responsibilities that may safely be performed by the individual filling that role and that are not otherwise proscribed by law, rule or statute.

(e) The Administrator-of-Record, being licensed by the Board, is legally and ultimately responsible for the management and operation of the facility and, as such, shall maintain sufficient on-site presence in the facility to effectively supervise the Assistant Administrator.

(f) The Administrator-of-Record shall ensure the Assistant Administrator does not concurrently serve as an Assistant Administrator of more than one (1) long term care facility.

(g) The Administrator-of-Record shall spend at least ten (10) hours per calendar week on-site in the facility, providing guidance and direction to the Assistant Administrator, and further, such on-site supervisory visits shall not be more than ten (10) calendar days apart.

(h) The Administrator-of-Record shall establish a clearly-written policy delineating who the individual residents, residents' family members and/or guardians, and facility staff should contact when the Administrator-of-Record is absent from the facility as well as the procedure that is to be utilized that clearly indicates 'when' and 'how' such contact shall be made. The policy and procedure shall be provided to residents, residents' family and/or guardians, and facility staff and shall be posted in a conspicuous place in the facility.

(i) The Administrator-of-Record shall not delegate nor cause to be delegated to the Assistant Administrator any duty or responsibility that has been specified in State or federal law, statute, rule or regulation as being a duty or responsibility that can only be performed by a duly licensed Administrator or any duty or responsibility that is otherwise prohibited by State or federal law, statute, rule or regulation.

(j) The Administrator-of-Record shall ensure that no individual serve as the Assistant Administrator if that individual holds a license granted by this Board, but which license is suspended, revoked or otherwise restricted, or if that individual has been sanctioned (formally excluded from participation in federally-funded health programs) by the U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG).

(k) The ~~facility~~ Administrator-of-record shall ensure that no individual serves as an Assistant Administrator if the facility at which the Assistant Administrator is to serve is not one of two-or-more facilities at which the Administrator serves as the Administrator-of-Record, that have a total bed complement not to exceed one-hundred-twenty (120) occupied beds and that are located with a fifty (50) mile radius of each other.

(l) The Administrator-of-Record shall establish a requirement for the certified assistant administrator to successfully complete no less than twenty-four (24) continuing education clock hours during each licensure period as a condition of employment and shall be responsible to ensure the certified assistant administrator(s) working under their license has renewed their certification with the Board by the end of each licensure period.

[OAR Docket #12-716; filed 5-24-12]

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

[OAR Docket #12-717]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Certification of Long Term Care Assistant Administrators
490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for an Assistant Administrator [AMENDED]
490:15-1-3.1. Evidence Requirements [AMENDED]
490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as a "Assistant Administrator [AMENDED]
Subchapter 3. Application for certification and requirements for continued eligibility
490:15-3-2. Approval process [AMENDED]
490:15-3-3. Requirements for Certified Assistant Administrators [NEW]
AUTHORITY:
Oklahoma State Board of Examiners for Long Term Care Administrators; 63 O.S., §§ 330.51 et seq.
DATES:
Comment period:
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Effective:
July 1, 2012
SUPERSEDED EMERGNCY ACTIONS:
NA
INCORPORATIONS BY REFERENCE:
NA
ANALYSIS:
The purpose of the rules changes was to update the requirements for long term care administrators in Oklahoma, primarily to include additional administrator types added to the purview of this Board (OSBELTCA) and to make proper allowances for their licensure by this Board, pursuant to recent statutory changes and under the authority of those statutory changes by the newly appointed Board. This required the addition of more terms to be defined or re-defined, detailing requirements for licensure for these new types of administrators and generally correcting terminology within the rules to reflect these changes. Additionally, there were other minor issues corrected to include the renewal of certified assistant administrators annually and requiring these same individuals to accomplish continuing education as a condition of employment. Likewise, the penalty for failure to accomplish continuing education, for all administrator types, was codified. The totality of these rules changes encompass Chapters 1, 10 and 15 (and a portion of Chapter 1 was approved separately by HJR1111).
CONTACT PERSON:
Gaylord Z. Thomas, Executive Director, Oklahoma State Board of Examiners for Long Term Care Administrators, 2401 N.W. 23rd Street, Suite 62, Oklahoma City, OK 73107, (405) 522-1616, email: gz.thomas@osbeltca.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. CERTIFICATION OF LONG TERM CARE ASSISTANT ADMINISTRATORS

490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for an Assistant Administrator

(a) In addition to the general requirements for administrators found at OAC 490:10-1-2.1, each applicant seeking certification as having met the minimum qualifications to be able to serve as an Assistant Administrator shall meet the requirements in this Section.

(b) In order to qualify to receive a letter from the Board wherein the Board would 'certify' that the individual met the minimum qualifications to be able to serve as an Assistant Administrator, each applicant must provide evidence satisfactory to the Board of the following:

(1) Successful completion of a high school education and receipt of a high school diploma, or receipt of his~~/her~~ G.E.D.;

(2) Successful completion of a Board-approved intensive review course on State Rules and Regulations;

(3) Receipt of a passing score on the current Oklahoma State Standards examination; and

(4) two (2) years of current management, leadership or supervisory experience in a long term care facility~~,~~.

490:15-1-3.1. Evidence requirements

To satisfy the Board's requirement for evidence indicating experience, the applicant shall submit a declaration signed by a licensed administrator of a long term care facility, facility medical director, facility director of nurses, or registered nurse, who can attest to the applicant's work and supervisory experience, explicitly stating how many individuals the candidate supervised in his supervisory role(s). The supervision of a program is not considered the same as supervision of personnel.

490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as an Assistant Administrator

(a) Under the supervision, direction and license of the licensed Administrator-of-Record, it shall be the responsibility of the Assistant Administrator to plan, organize, direct, and control those day-to-day functions of a facility delegated to him~~/her~~ and to maintain the facility's compliance with applicable laws, rules, and regulations during the absence of the licensed administrator.

(b) An Assistant Administrator shall practice only under the direct supervision and license of a licensed Administrator-of-Record who is in charge of two-or-more licensed facilities within a 50-mile radius wherein the total number of occupied beds does not exceed 120, and whose license is active and otherwise unrestricted. An Assistant Administrator shall not continue to serve at a facility in the assistant administrator capacity if the ~~license of the~~ Administrator-of-Record is the Administrator-of- Record at a single nursing facility, the administrator's license is suspended, or revoked ~~or placed on inactive status~~, or if the Administrator-of-Record resigns his~~/her~~ employment or his~~/her~~ employment is otherwise terminated, until such time as another licensed administrator is designated and begins serving as the Administrator-of-Record of two-or- more facilities.

(c) An individual serving as an Assistant Administrator shall be employed by the facility full-time in that capacity, regularly-scheduled for 40 hours per calendar week; shall not concurrently serve as the Assistant Administrator of more than one (1) ~~long-term care~~nursing facility; and shall spend at least eighty (80%) percent of ~~their~~his working time on-site at the facility, equitably distributing ~~their~~his on-site time throughout each calendar week, with emphasis placed on weekdays, Monday through Friday, between the hours of 9:00 a.m. and 5:00 p.m. .

SUBCHAPTER 3. APPLICATION FOR CERTIFICATION AND REQUIREMENTS FOR CONTINUED ELIGIBILITY

490:15-3-2. Approval process

(a) Upon verification of compliance with all requirements, the Board shall 'certify' an individual as having met, as of the date of the letter, the minimum requirements to be eligible to serve as an Assistant Administrator within a single nursing facility, one which is administered by a licensed nursing home administrator who is serving as the administrator-of-record for that facility and for one-or-more additional licensed facilities within a 50-mile radius of each other and wherein the total number of occupied beds at all such facilities administered by this Administrator-of-Record does not exceed 120.

(b) The applicant shall be presented to the Board for consideration at the next Board meeting. Applicants are encouraged to attend the Board meeting.

(c) Applicants shall be notified of the Board's decision by letter in which the Board will either 'certify' the individual as having met the minimum qualifications or will indicate the individual did not meet the minimum qualifications for the Board to issue its 'certification'. The Board will maintain a listing of individuals it has 'certified' as having met the minimum qualifications. Such listing shall include the individual's name, mailing address and the date the Board issued the letter of 'certification'.

(d) As of the date the Board 'certifies' that an individual applicant meets the minimum requirements for that individual to serve in the capacity of an Assistant Administrator, the individual may serve in such an unlicensed capacity. However, it shall be the obligation of the Administrator-of-Record to subsequently verify that the individual serving as an Assistant Administrator continues to meet the minimum qualifications for continued certification (i.e. criminal background check and current employment in the industry as a supervisor). The administrator of record shall also require completion of CEUs in accordance with provisions in OAC 490:1-9-4, as a condition of employment, and a mechanism to ensure the assistant is current and professionally trained.

490:15-3-3. Requirements for certified assistant administrators

(a) As of the effective date of these rules, an individual certified as an assistant administrator is required to continue to meet the minimum requirements to maintain their certification. They shall be required to renew their certification annually during the Board's annual renewal period, starting in 2012, following Board established renewal processes and paying the prescribed renewal fees. Failure to renew shall be treated in the same manner as lapsed licenses are treated by the Board and the certification vacated following this same process.

(b) Certified Assistant Administrators who are not working as certified assistant administrators are responsible for accomplishing the minimum annual CEU employment requirements to remain qualified and are responsible to renew their own certification with the Board.

[OAR Docket #12-717; filed 5-24-12]

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

[OAR Docket #12-744]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Affirmative Action and Equal Employment Opportunity
Part 2. Discrimination Complaints Investigations
530:10-3-22 [AMENDED]
Subchapter 7. Salary and Payroll
Part 1. Salary and Rate of Pay
530:10-7-19 [REVOKED]
Subchapter 9. Recruitment and Selection
Part 3. Written and Performance Tests
530:10-9-37 [AMENDED]
530:10-9-38 [AMENDED]
Part 5. Registers
530:10-9-52 [AMENDED]
Part 9. Classified Appointments
530:10-9-100 [AMENDED]
Part 11. Direct Hire Authority
530:10-9-111 [AMENDED]
Part 13. Veterans Preference
530:10-9-131 [AMENDED]
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-58 [NEW]
Subchapter 17. Performance Evaluation and Career Enhancement Programs
Part 7. Carl Albert Public Internship Program
530:10-17-77 [AMENDED]
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
AUTHORITY:
The Administrator of the Office of Personnel Management of the Office of State Finance: 74 O.S., §§ 840-1.6A, 840-2.16, 840-2.20, 840-3.2, 840-4.12, 840-4.13, 840-4.14.
COMMENT PERIOD:
February 15, 2012 to March 21, 2012.
PUBLIC HEARING:
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March 28, 2012
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May 4, 2012
LEGISLATIVE APPROVAL:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2012.
FINAL ADOPTION:
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EFFECTIVE:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
Superseded Rules:
Subchapter 15. Time and Leave
Part 5. Miscellaneous Types of Leave
530:10-15-58 [NEW]
Appendix A. Pay Band Schedule [REVOKED]
Appendix A. Pay Band Schedule [NEW]
Gubernatorial Approval:
August 26, 2011
Register publication:
29 Ok Reg 63
Docket number:
11-1038
INCORPORATIONS BY REFERENCE:
None.
ANALYSIS:
The proposed amendments to 530:10-3-22 are necessary to improve the efficiency of the training requirements of discrimination complaints investigators. The revocation of amendments 530:10-7-19 is necessary because the OK Health Incentive Pay has been abolished. The proposed amendments to 530:10-9-37 and 530:10-9-38 are necessary to establish set guidelines for repeating and reviewing examinations for exams administered pursuant to the state job application process for the classified service. The proposed amendments to 530:10-9-52 are necessary to update the language as a result of technological advancements of the State Online Application Process. The proposed amendments to 530:10-9-100 are necessary to update the Optional Program for Hiring Applicants with Disabilities reapplication process as a result of technological advancements and to improve the efficiency of the reapplication process. The proposed amendment to 530:10-9-111 is necessary to correct grammatical errors. The proposed amendments to 530:10-9-131 are necessary to make grammatical corrections. The proposed rule, 530:10-15-58, is necessary to incorporate the new leave provision for state employees who are reserve municipal police officers and deputy sheriffs and perform such duties in cases of emergency into the Merit Rules, pursuant to SB 666's (2011 Oklahoma Legislative Session) statutory amendments to Title 74 O.S. §840-2.20. The proposed amendments to the Appendix A. Pay Band Schedule are necessary so that the schedule is in compliance with the provisions of Title 74 O.S. §840-2.16, which requires the State Employee Minimum Wage Rate to be that of a three-person household as established by the Federal Poverty Guidelines, issued by the United States Department of Health and Human Services. The United States Department of Health and Human Services recently revised the Federal Poverty Guidelines and provide for a 3% adjustment as proposed in Annual Compensation Report issued by the Office of Personnel Management division of the Office of State Finance. The proposed amendments to the Pay Band Schedule reflect the revisions of the guidelines. The proposed amendments to 530:10-15-58 have gone through the emergency rule process and are now being proposed to make the amendments permanent. The proposed amendments to 530:10-17-77 are necessary to improve efficiency of the Carl Albert Internship appointment process.
CONTACT PERSON:
Kara I. Smith, General Counsel, Office of Personnel Management Division of the Office of State Finance, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 521-2177.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

530:10-3-22. Training requirements for discrimination complaints investigators

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following initial training and initial certification provisions:

(1) completion of four days of initial discrimination complaints investigator training either conducted by the Office of Personnel Management or approved by the Administrator. The initial discrimination complaints investigator training shall provide participants with a current knowledge of:

(A) ~~Oklahoma and federal~~ equal employment opportunity laws and rules;

(B) theories of discrimination and burdens of proof;

(C) planning and conducting complete and impartial investigations;

(D) techniques for interviewing witnesses;

(E) collecting relevant evidence;

(F) documenting the record of investigation; and

(G) preparing the written report of investigation.

(2) a person who has completed the EEO Training for New Investigators conducted by the U.S. EEOC Training Institute shall not be subject to the initial training requirements of (a)(1) of this section.

(~~2~~3) In addition to the requirements referenced in (a)(1) of this Section a minimum of one investigation must be completed under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination.

(~~3~~4) a person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.

(~~4~~5) the Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

(A) determines the person has completed the initial training requirements established in (a)(1) of this Section, and

(B) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

(~~5~~6) the Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.

(b) All persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall be subject to the following continuing education training requirements:

(1) A minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in (b)(2) of this section each calendar year or other annual training that may be announced by the Administrator. Investigators who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.

(2) Discrimination complaints investigator annual training shall provide participants with a current knowledge of:

(A) ~~Oklahoma and federal~~ equal employment opportunity laws and rules; ncluding the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., and Section 504 of the Federal Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and court cases;

(B) theories of discrimination and burdens of proof;

(C) planning and conducting complete and impartial investigations;

(D) techniques for interviewing witnesses;

(E) collecting relevant evidence;

(F) documenting the record of investigation; and

(G) preparing the written report of investigation.

(H) investigating discrimination complaints;

(I) personnel practices and procedures;

(J) alternative dispute resolution; or

(K) diversity and multi-culturalism.

(3) Discrimination complaints investigators who do not complete the annual training described in (b)(1), or who fail to report such training by January 30th of the following year, will be placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATE OF PAY

530:10-7-19. OK Health Incentive Pay [REVOKED]

~~(a) *Agencies may elect to participate in OK Health, the Employees Benefits Council's wellness mentoring program, a program designed to lower employee health care utilization by improving overall health.* [74:1383]. Appointing Authorities may pay incentives to employees who participate in OK Health. The pay incentive shall consist of three separate lump sum payments payable to an employee upon completion of specified steps in the program and shall be available for only the first twelve months of an employee's participation in the program.~~

~~(b) A participating Appointing Authority may select one of the three following incentive packages:~~

~~(1) Bronze Plan: $100.00 total financial incentive payable as follows:~~

~~(A) $25.00 for completing enrollment process;~~

~~(B) $25.00 for completion of twelve-week process; and,~~

~~(C) $50.00 for completion of year-end follow-up evaluation.~~

~~(2) Silver Plan: $300.00 total financial incentive payable as follows:~~

~~(A) $75.00 for completing enrollment process;~~

~~(B) $100.00 for completion of twelve-week process; and,~~

~~(C) $125.00 for completion of year-end follow-up evaluation.~~

~~(3) Gold Plan: $500.00 total financial incentive payable as follows:~~

~~(A) $100.00 for completing enrollment process;~~

~~(B) $175.00 for completion of twelve-week process; and,~~

~~(C) $225.00 for completion of year-end follow-up evaluation.~~

~~(c) The Employees Benefits Council shall certify to the Appointing Authority employee completion of the enrollment process, the twelve-week process, or the year-end follow-up evaluation on a form prescribed by the Council.~~

~~(d) Agencies shall select a specific incentive package once per calendar year. Once an Appointing Authority has selected an incentive package, it may not be modified within the same calendar year.~~

~~(e) Should an employee begin the OK Health program at one agency and subsequently become employed by a different agency, the employee is entitled to payment pursuant to the incentive plan elected by the current employing agency if the agency is a participating agency.~~

SUBCHAPTER 9. RECRUITMENT AND SELECTION

PART 3. WRITTEN AND PERFORMANCE TESTS

530:10-9-37. Repeating examinations

(a) ~~A person may repeat a written test or performance test at intervals that shall be determined and made public by the Administrator.~~ A person with a current and qualifying application may repeat a multiple-choice test 182 days from the original test date. A performance test may be repeated daily for as long as an applicant has a current and qualifying application that requires the performance test.

(b) The repeat interval for a written or performance test shall apply to both entrance and promotional examinations. The most recent, valid score on a written test will be used. An applicant may request to be certified with a score on a performance test other than the most recent one, provided that the score requested on a test is consistent with guidelines issued and made public by the Administrator. Otherwise, the examination is considered void.

530:10-9-38. Reviewing examinations

Applicants shall be entitled to inspect their own rating and examination papers maintained in the Office of Personnel Management up to 30 days after the date of the examination. Such inspection shall be permitted only during regular business hours at the Office of Personnel Management and shall include only those materials which would not compromise the security of the selection procedure. Any person who reviews an examination may not participate in the same examination for ~~period of time designated by the Administrator consistent with guidelines issued and made public by the Administrator~~one year from the date of the review.

PART 5. REGISTERS

530:10-9-52. Removal of names from registers

(a) In addition to the reasons set forth in 530:10-9-9, when a written request which states the reason for such action is received from an Appointing Authority or based upon an action of the Office of Personnel Management, the Office of Personnel Management may temporarily or permanently remove an eligible from a register for any of the following reasons:

(1) Removal requested by eligible applicant.

(2) Appointment through certification to fill a permanent position in the same job.

(3) Failure to respond within 7 calendar days exclusive of the date of mailing of a written inquiry by the Appointing Authority relative to availability for appointment. Such inquiry shall include the date and time by which the eligible must contact the Appointing Authority.

(4) Failure to respond within 72 hours to an ~~e-mail~~ electronic message from the Appointing Authority relative to availability for appointment. Such inquiry shall include the date and time by which the eligible must contact the Appointing Authority and must be sent to the ~~e-mail address~~ contact information provided by the eligible.

(5) Failure to appear for a scheduled interview.

(6) Declination of further consideration for selection.

(7) Declination of appointment.

(8) Failure to report for duty within the time specified by the Appointing Authority. (See 530:10-9-94.)

(9) Abolition of register by the Office of Personnel Management.

(b) Any person so affected shall be notified of this action and the reason for it. ~~An eligible may request restoration to the register. If the Office of Personnel Management refuses to restore the eligible's name, such eligible may appeal to the Merit Protection Commission.~~

PART 9. CLASSIFIED APPOINTMENTS

530:10-9-100. Optional Program for Hiring Applicants with Disabilities

(a) Appointing Authorities may employ persons with severe disabilities who are legal residents of Oklahoma through the Optional Program for Hiring Applicants with Disabilities ("Program") [74:840-4.12]. Program participants shall meet all minimum qualifications of education and experience, but shall be exempt from entrance examinations and hiring procedures administered by the Office of Personnel Management [74:840-4.12]. Program participants shall be certified as having disabilities in accordance with the standards and procedures in subsection (b) of this Section [74:840-4.12]. Persons with severe disabilities are not required to participate in this Program, and they may elect to be considered for employment through regular selection procedures [74:840-4.12].

(b) The Department of Rehabilitation Services shall certify an applicant as having disabilities according to the definition for "individual with severe disability" in OAC 612:10-1-2, which the Administrator has established as the standard for disability certification, and shall provide electronic or written verification to the applicant and to the Office of Personnel Management.

(c) The Administrator shall give each Program applicant certified according to (b), a letter of notification of all job family levels for which the applicant has applied and possesses the minimum qualifications of education and experience.

(d) Letters of notification as described in (c) shall be valid for an initial 12-month period. Applicants may renew eligibility every 12 months by ~~notifying~~ reapplying with the Office of Personnel Management.

(e) An applicant for the Program may apply directly to employing agencies. In order to be eligible for appointment to fill a vacant position, an applicant shall be a legal resident of Oklahoma. The applicant shall submit to the Appointing Authority of the employing agency a current letter from the Administrator as described in subsections (c) and (d) indicating the applicant possesses the qualifications of education and experience for the vacancy.

(f) Persons with severe disabilities hired pursuant to this Program shall be subject to the Merit Rules [74:840-4.12].

PART 11. DIRECT HIRE AUTHORITY

530:10-9-111. Definitions

In addition to terms defined in ~~530:10-1-2~~530:10-1-2 the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Adequate applicant pool" means 10 or more available qualified eligibles on open competitive announcements maintained by the Office of Personnel Management for the location of a vacancy under the conditions of employment required for the position. However, the presence of one Absolute Preference Veteran on open competitive announcements maintained by the Office of Personnel Management for the location of a vacancy under the conditions of employment required for the position shall also constitute an adequate applicant pool, regardless of the presence or absence of other available qualified eligibles.

"Conditions for employment" means requirements for the position established by the agency and approved by the Office of Personnel Management such as willingness to travel, perform shift work, or work in a particular geographic location, or possession of any selective qualifications or special requirements for the position.

"Direct hire authority" means the authorization for an Appointing Authority to certify the qualifications of and appoint an eligible applicant to a position requiring professional practice licensure or to a position which has been identified by the Administrator as hard-to-fill.

"Hard-to-fill positions" means a vacant position or positions in a job family for which a state agency has been unable to identify an adequate applicant pool within the past 2 weeks of open competitive announcement.

"Professional practice licensure positions" means those positions within a job family for which the Administrator has determined the minimum qualifications for the job require professional licensure with the State of Oklahoma to legally practice in the profession. Such a job shall involve work requiring knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction or study such as a bachelor's degree from an accredited college or university. The Administrator shall maintain a list of jobs requiring professional practice licensure and shall make the list available to all state agencies with positions allocated to these job families.

PART 13. VETERANS PREFERENCE

530:10-9-131. Pass for cause of an absolute preference veteran

(a) An Appointing Authority who finds it necessary to pass over an Absolute Preference Veteran for cause must receive written approval from the Administrator before taking such action. Any Appointing Authority who, without prior approval, passes an Absolute Preference Veteran for cause on any certificate returned to the Office of Personnel Management shall be required to hire the preferenced applicant, if such pass for cause is subsequently rejected by the Administrator. No offer of initial employment may be made to any applicant

ranked below such veterans in the absence of this approval; such offers and any subsequent initial appointments shall be void. [74:840-4.14(A)(3)]

(b) Nothing in this Section prohibits or limits passing an Absolute Preference Veteran to hire another Absolute Preference Veteran within the hiring rule, or hiring any other eligible through means other than an initial appointment.

(c) A request to pass over or disqualify an Absolute Preference Veteran shall include a detailed written explanation and justification provided by the Appointing Authority documenting why the Appointing Authority believes:

(1) the applicant cannot be reasonably expected *to satisfactorily perform at the required level of the position* [74:840-4.14(A)(3)]; or

(2) it is necessary to disqualify the applicant because of 1 or more of the causes for disqualification listed in 530:10-9-9, **Disqualifications.**

(d) Any person who is so disqualified shall be notified in writing by the Administrator of the right to appeal.

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

530:10-15-58. Leave for reserve municipal police officers and reserve deputy sheriffs

(a) Employees who are reserve municipal police officers pursuant to Section 34-401 of Title 11 of the Oklahoma Statutes and employees who are reserve deputy sheriffs pursuant to Section 547 of Title 19 of the Oklahoma Statutes and who miss work in performing their duties in case of emergency shall not have to use any accrued leave or make up any time due to the performance of their reserve duties.

(b) Employees subject to the provisions of subsection (a) may be required, upon the request of the Appointing Authority, to provide appropriate documentation from the applicable law enforcement authority that identifies the nature of the emergency and the period of time of the employees involvement.

SUBCHAPTER 17. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM

530:10-17-77. Application form and procedure

(a) **Application form and applicant survey form.**

(1) The Carl Albert Public Internship Program application is available from the Office of Personnel Management. The application form provides information about the application process and eligibility requirements. It solicits information about applicants and their qualifications for participation in the program.

(2) Applicants may apply at any time.

(3) An applicant may complete a voluntary survey form which solicits information related to demographics, including race or ethnic group, and disabilities. The information shall be
used for statistical purposes only.

(b) **Communication with the Office of Personnel Management.** Interested persons may direct communications to the attention of the Carl Albert Public Internship Program in accordance with 530:1-1-12.

(c) **Application procedure.** Applicants for the internship program shall provide the following information to the Office of Personnel Management for review and determination of eligibility:

(1) A completed application form as prescribed by the Administrator;

(2) Transcript(s) of coursework from accredited higher education institutions;

(3) A letter of nomination from a faculty member of the higher education institution where they are enrolled;

(4) A letter of recommendation from the current Appointing Authority, if the applicant is a state employee [74:840-3.4(C)];

(5) A resume;

(6) Three letters of recommendation from persons other than relatives or the nominating faculty member;

(7) Verification of current enrollment.

(d) **Notification.** The Administrator shall notify applicants if the documents they submit are sufficient for eligibility. A notice of eligibility does not mean the applicant will be employed as an intern.

(e) **Length of eligibility.** Applicant information on file at the Office of Personnel Management shall remain active if eligible applicants submit verification of current enrollment and an updated transcript each semester. If applicants fail to provide updated information within 90 days after the end of the previous semester, they will no longer be eligible for employment as an intern and their names will be removed from the list of eligible applicants made available to state agencies.

(f) **Appointment.**

(1) The Administrator shall provide a list of all eligible applicants for the Carl Albert Public Internship Program to state agencies periodically and at an agency's request. An agency may request an eligible applicant list and copies of individual eligible intern files at any time.

(2) An agency may provisionally appoint any eligible applicant pending the review and approval of the Administrator.~~after the~~ The Administrator ~~has approved~~ must approve a completed Carl Albert Public Internship Agreement Form described in (3) of this subsection within 30 days of the provisional appointment of the eligible applicant. A new form shall be completed if there are any substantive changes to the original agreement.

(3) The Administrator shall provide the internship agreement form to state agencies. The form solicits information about the employing agency, the Executive Fellow, Undergraduate Intern, or the Senior Undergraduate Intern,

and the internship faculty member. The form provides information regarding employment, benefits, training, work schedule, duties, compensation, and projected length of internship. Before an eligible applicant enters on duty, the agreement form shall be completed and signed by:

(A) The eligible applicant;

(B) The Appointing Authority or designee of the employing agency, who shall certify that the internship appointment does not contravene any provision of the Oklahoma Personnel Act or the Merit Rules;

(C) The college or university faculty member who shall monitor the internship; and

(D) A representative of the Administrator.

(4) All intern appointments are made at the discretion of the Appointing Authority. Executive Fellows will count against an agency's full-time-equivalent employee limit if an agency retains them after the internship time period is completed.

(5) The signature of the faculty member shall not be required when a Carl Albert Executive Fellow who has already completed his or her degree requirements is completing a new agreement form.

(g) **State employees.** State employees may apply to participate in the Carl Albert Public Internship Program. Permanent classified and regular unclassified employees who receive internship appointments may request leave without pay from their permanent or regular employment in accordance with 530:10-15-47, **Leave of absence without pay.** Probationary employees and regular unclassified employees with less than **12** months continuous service shall resign before entry-on-duty as an intern.

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

Pay Band	Minimum	Midpoint	Maximum
A*	$19,090	$18,859	$23,574
B*	$19,090	$19,108	$23,884
C*	$19,090	$20,215	$25,268
D*	$19,090	$21,793	$27,241
E*	$19,090	$23,973	$29,967
F	$19,778	$26,370	$32,963
G	$21,756	$29,008	$36,260
H	$23,931	$31,908	$39,885
I	$26,502	$35,336	$44,170
J	$29,136	$38,849	$48,561
K	$31,848	$42,464	$53,080
L	$35,032	$46,709	$58,387
M	$38,885	$51,846	$64,808
N	$43,163	$57,550	$71,938
O	$48,342	$64,455	$80,569
P	$54,627	$72,835	$91,044
Q	$61,728	$82,304	$102,880
R	$69,753	$93,004	$116,255

*Minimum revised to reflect State employee minimum wage rate.
(see 74 O.S. 840-2.16)

[OAR Docket #12-744; filed 5-25-12]

TITLE 550. OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-730]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Petition Procedures
550:1-5-2. Individual hearings [AMENDED]
Subchapter 7. Collections and Disbursements
550:1-5-7-2.1 Reemployment by participating municipality [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
DATES:
Comment period:
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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The proposed amendments to OAC 550:1-5-2 clarifies the record of hearing to be a digital recording.
Related statutes/rules:
550:1-5-4
75 O.S. § 309
The proposed amendments to OAC 550:1-7-2.0(b) clarifies 11 O.S. Sections 50-112 in that members must file an application for refund following termination.
Related statutes/rules:
11 O.S § 50-112
CONTACT PERSON:
Darcie Gordon, Administrative Assistant, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 227.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 5. PETITION PROCEDURES

550:1-5-2. Individual hearings

(a) **Application/written request for right to relief.** In each individual proceeding, there shall be filed with the Oklahoma Police Pension and Retirement Board an application/written request stating a brief summary of facts giving rise to the request for relief.

(b) **Notice of receipt.** The Chairman of the Board, or other person designated by the Chairman, shall notify the party requesting the individual hearing of the acceptance of the application/written request for individual hearing by the Oklahoma Police Pension and Retirement Board or a hearing officer and shall specify the date, time, and place for the hearing. The notice shall comply with the requirements of 75 O.S., Section 309 and laws amendatory thereto, and may incorporate by reference material alleged in the application/written request.

(c) **Service of notices.** All notices or other papers requiring service in an individual proceeding shall, unless otherwise provided by statute, be served in one of the following manners:

(1) Personal service by a person appointed by the Board to make such service in the manner authorized by the laws of this state for the service of summons or other process in the state courts; or

(2) By certified mail forwarded by the Board or its designee, at the exact location that the person can be served such notice.

(3) If the personal service or if service by mail cannot be made after the exercise of all due diligence in attempting to learn the whereabouts or mailing address of any person to be served, then by publication in such newspapers as is determined by the Board.

(d) **Completed service of notice.** Service of notice shall be complete upon receipt of certified mail by the addressee or upon the first posting of publication notice.

(e) **Setting of hearing.** The time set for a hearing as specified in the notice shall not be less than ten (10) days after date of mailing of notice, unless otherwise agreed upon by the parties. Motions for extension of time or for a continuance of the hearing shall be made in writing and shall be filed with the Board or a person designated by the Board. Any such motion shall be for a time certain and any such motion for an extension or continuance shall state the reasons for the request and specify the length of time. Each party to a hearing shall be allowed to move for one (1) continuance wherein the Board or the person designated by the Board shall act upon such motion promptly and grant or deny such request in the exercise of sound discretion. If the motion is denied, the party may renew his or her request at the hearing.

(f) **Subpoenas.** Subpoenas for the attendance of witnesses, for the furnishing of information required by the Board or hearing officer and for the production of evidence shall be issued by the Board or their designee upon written request.

(1) Subpoenas shall be served and a return made in the same manner as provided for in state court proceedings.

(2) If a person fails to obey a subpoena, refuses to be sworn or make an affirmation at a hearing, or refuses to answer a question put to him or her in the course of a hearing, the Board or hearing officer may institute appropriate judicial proceedings to compel compliance with the

subpoena or the giving of testimony. The hearing shall proceed as long as practical despite any such refusal but the Board or hearing officer may, at its discretion, at any time, continue the proceedings for such time as may be necessary to secure a court ruling.

(3) Any person who fails to appear as directed, after receipt of notice as provided by these rules, may be determined to have waived the right to appear and present a defense to the allegations contained in the notice and/or request for relief. A final order in such a proceeding may be issued by the Chairman.

(g) **Order of procedure.** The order of procedure in all individual proceedings for members of the Police Pension and Retirement System shall generally follow that which applies in civil proceedings at law. Each party shall be afforded an opportunity to make a brief opening statement, to present witnesses, documents, and exhibits on its behalf, to cross examine adverse witnesses, and to rebut and to make closing arguments. The rules of evidence applicable to such hearing shall be those specified by the Administrative Procedures Act. At the discretion of the Board or hearing officer, any party may reopen his or her case in chief even after the adverse party has rested. Parties may enter into stipulations on any lawful matter.

(h) **Objections.** The Board or hearing officer shall rule on the admissibility of evidence and objections to evidence and shall rule on motions or objections raised in the course of such hearings. In the exercise of this function the Board or hearing officer may rely on the advice of counsel present and serving in such advisory capacity. Any party may object to a ruling which the party considers erroneous and an exception to such ruling shall be noted on the record. Failure to timely object to any alleged error or irregularity shall be deemed a waiver of such objection.

(i) **Findings of Fact / Conclusions of Law.** The Board or hearing officer shall hear all evidence and arguments applicable in a case and shall prepare Findings of Fact and Conclusions of Law which shall be submitted to the Chairman of the Board and mailed to parties to the action. The Board or hearing officer may request the parties to submit proposed Findings of Fact and Conclusions of Law before making a ruling on the matter at issue.

(j) **Record of hearing.** A record of the hearing, in the form of a ~~tape~~digital recording, will be made of all hearings conducted by the Board or a hearing officer.

(k) **Issuance of Board's order.** At the conclusion of the proceedings, the Board shall issue an order reflecting the Findings of Fact made, and the Conclusions of Law specifying the action taken. The order shall be signed by the Chairman. Parties shall be notified by mail of the issuance of an order and a copy of the order shall be provided to the party or his/her attorney.

(l) **Record on file.** The record of a proceeding and the file containing the pleadings in such a proceeding will be maintained at the Oklahoma Police Pension and Retirement System.

(m) **Petition of rehearing.** Any person may petition for a rehearing, reopening or reconsideration of any decision in an individual proceeding. Such petition must be filed within ten (10) days of the date on which the order was issued and shall state the grounds for requesting such action. The grounds for such action are set forth in 75 O.S., Section 317 and are the only grounds for rehearing, reopening or reconsidering such action. Hearings pursuant to such a request, when granted by the Board, shall be limited to the issues upon which the reconsideration, reopening or rehearing was granted.

SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS

550:1-7-2.1. Reemployment by participating municipality

(a) Retirement pursuant to 11 O.S. Section 50-112 has at all times included reemployment of a member by a participating municipality in a position not covered by the Oklahoma Police Pension and Retirement System. Thus, in-service distributions from the Oklahoma Police Pension and Retirement System to such a member are permitted. In-service distributions to a reemployed police chief are also permitted.

(b) A member who has terminated employment with a participating municipality must submit an application for refund prior to reemployment with a participating municipality in order to receive a refund of member contributions.

[OAR Docket #12-730; filed 5-25-12]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 2. OPERATIONS UNDER THE FPAA AND THE MECBA

[OAR Docket #12-710]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
585:2-1-1 through 585:2-1-5 [AMENDED]
Subchapter 3. Program Administration And Description
585:2-3-1 [AMENDED]
585:2-3-5 through 2-3-8 [AMENDED]
Subchapter 5. Procedures
585:2-5-5 through 2-5-7 [AMENDED]
585:2-5-10 [REVOKED]
Subchapter 7. Hearings
585:2-7-3 [AMENDED]
585:2-7-12 [AMENDED]
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ANALYSIS:
The permanent rule revisions to Chapter 2 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq) effective November 1, 2011. All rules referencing this Act have been deleted.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Department of Central Services, 2401 North Lincoln Boulevard, Room 206, Oklahoma City, OK 73105, 405-522-6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

585:2-1-1. Purpose

These rules have been adopted for the purpose of complying with the provisions of the Administrative Procedures Act, 75 O.S. §250 et seq. They are intended as aids to the efficient operation of the Public Employees Relations Board and to the orderly administration of the Fire and Police Arbitration Act (FPAA) ~~and the Municipal Employees Collective Bargaining Act (MECBA).~~ They are also intended to provide meaningful avenues for realizing and enforcing statutory rights and obligations of certain public employees, employee organizations, and the municipal employers of this state.

585:2-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA ~~and the MECBA~~ unless their context clearly indicates otherwise.

585:2-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to ~~74~~11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

~~**"MECBA"** means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.~~

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:2-1-4. Severability

If any section or sections of these Rules are held by a court or by the Attorney General of the State of Oklahoma to be inconsistent with any Oklahoma statute or statutes as they presently exist or are hereafter amended, the partial or total invalidity of any such section or sections shall not affect the remaining valid sections of these Rules.

585:2-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA ~~and the MECBA.~~

SUBCHAPTER 3. PROGRAM ADMINISTRATION AND DESCRIPTION

585:2-3-1. PERB Board, description and powers; hearing officer

(a) The Board is an administrative body created by 11 O.S., §51-104 ~~and referred to in 11 O.S.,§51-24~~. The Board consists of three (3) members who are appointed by the Governor, and whose powers and duties are prescribed by the Legislature. The Board has an Administrator to carry out certain designated functions of the Board, including, but not limited to, conducting representation elections.

(b) The Board may appoint a hearing officer to carry out functions of the Board including, but not limited to, conducting representation elections, and unfair labor practice charge hearings ~~and prohibited practices hearings~~.

(c) The Board, on its own motion, may initiate actions when the Board determines that it is necessary to do so in order to accomplish the objectives and to carry out the duties prescribed by the FPAA ~~and the MECBA~~.

585:2-3-5. Retention of pleadings or documents by the Board

(a) All pleadings and/or documents filed with or presented to the Board shall be retained and disposed of in accordance with the ~~Department of Central Services~~ Consolidated Records Disposition Schedule established for PERB.

(b) The Board may permit the withdrawal of original pleadings or documents upon the submission of properly authenticated copies to replace such documents.

585:2-3-6. Forms and instructions

(a) The Board shall cause to be created forms and instructions related to bargaining unit determination, certification and decertification process; the filing of unfair labor practice ~~and prohibited practice~~ charges; Final Pre-Hearing Orders and for such other matters related to operations of the Board as deemed necessary by the Board. The parties shall use the appropriate forms and instructions created by the Board.

(b) Forms and instructions shall be maintained at the offices of the Board and shall be available to any person upon request.

585:2-3-7. Failure of Party to Comply with Statutes, Rules or Orders of the Board

Failure of any party to comply with the FPAA, ~~the MECBA~~, these rules or orders of the Board may result in the Board dismissing a charge, striking a pleading, issuing a preclusion order, staying an action, entering default judgment or taking other appropriate action.

585:2-3-8. Petitions for rulemaking

(a) **General.** Any interested person may petition the Board in writing to promulgate, amend or repeal a rule.

(b) **Permanent docket of petitions for rulemaking.** The Board shall maintain a permanent docket concerning petitions for the promulgation, amendment or repeal of a rule. At the time such a petition is filed, it shall be numbered, and the number of the petition, the date of filing, the designation of the action sought, and the name and address of the person who filed the petition shall be shown. The address shall include the city, state, street number or post office box and zip code.

(c) **Petition filing requirements.** The petition must be filed with the Board in duplicate and shall be typewritten, except as may be waived by the Board upon written request.

(d) **Petition contents.** The petition shall contain the following information as applicable and except as may be waived by the Board:

(1) A statement of the legal authority and jurisdiction under which the petition is filed;

(2) The exact language of the proposed rule, amendment, or repeal requested;

(3) A statement and legal references which show that the requested rule, amendment or repeal is not in conflict with any existing rule, ruling, order or opinion of the Board or any policy or provision of the FPAA~~, the MECBA~~ or the APA, or that any earlier rule, ruling, order or opinion should be set aside or modified;

(4) A statement of the purpose of the requested rule, amendment or repeal and at least one example or fact situation to which the rule, amendment or repeal will apply; and

(5) The name and address of the person who requested the rule, amendment or repeal. In the event the request is made by an association, the request shall also include the name and address of a contact person at said association who is able to provide meaningful information related to the request.

(e) **Petition study period.** The petition shall be submitted for study for a maximum period of ninety (90) days.

(f) **Additional information for consideration of petition.** The Board, on its own motion or upon the request of any other interested party, may require any petitioner to provide additional information, as may be specified by the Board, for use in the Board's consideration and disposition of a petition. The failure of a petitioner to provide additional requested information shall constitute grounds for the Board to take no action on a petition.

(g) **Public hearing.** Upon completion of the study period, the Board, during a regular or special meeting, shall hold a public hearing and consider the merits and proper disposition of the petition. Not less than ten (10) days prior to such meeting, the Administrator of the Board shall notify the petitioner in writing of the date, time, and place such petition shall be considered, and the Board may request petitioner's presence for purpose of argument or submission of other information related to the petition.

(h) **Hearing of proponents and opponents.** At the time and place designated for the public hearing, proponents and opponents of the proposed rule, amendment or repeal of a rule may be heard in the manner and order set forth by the Board at that time.

(i) **Board's decision.** At the conclusion of the public hearing, the Board shall render its decision on the petition. In the event the Board concurs with the action indicated in the petition, it shall take immediate steps to adopt, amend, or revoke the subject rule. In the event the Board does not concur with the requested action, it shall notify the petitioner of its nonconcurrence in writing, specifying the reason or reasons for nonconcurrence.

(j) **Rehearing, reopening or reconsideration of petition.** Dissatisfied parties may request a rehearing, reopening or reconsideration within ten (10) days from the date the action was taken by the Board in the manner allowed by the APA at 75 O.S., §317, or its successor statute.

(k) **Notice of proposed rule changes mailing list.** Any person who desires notice of proposed rule changes may contact the Board office for inclusion on a mailing list. Such persons shall be notified of the time and place of the public hearing.

SUBCHAPTER 5. PROCEDURES

585:2-5-5. Filing of complaint and answer

Proceedings against a party alleging an unfair labor practice under the FPAA ~~or a prohibited practice under the MECBA~~

shall be commenced by filing a written charge with the PERB within six (6) months of the alleged violation, or knowledge thereof, and causing a copy of the charge to be served upon the accused party by certified mail, return receipt requested. The accused party shall have ten (10) days from the date of service to file with the PERB and serve on the complainant a written answer to the charge.

585:2-5-6. Scheduling of deadlines

(a) **Scheduling conference.** A scheduling conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA ~~or a prohibited practice under the MECBA~~. The scheduling conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the scheduling conference. Unless otherwise ordered, the Administrator of the Board shall conduct the scheduling conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Written scheduling order.** At the scheduling conference, a written scheduling order will be prepared by the person conducting the conference addressing the following items:

(1) Date for discovery to be completed;

(2) Date for exchange of preliminary witness and exhibit lists;

(3) Date for filing Final Pre-Hearing Order (filed by Complainant's counsel five (5) days prior to the final pre-hearing conference);

(4) Date for completion of any mediation or other form of alternative dispute resolution (before date of final pre-hearing conference); and

(5) Date of final pre-hearing conference.

585:2-5-7. Final pre-hearing conference

(a) **Final pre-hearing conference.** A final pre-hearing conference shall be conducted in all proceedings alleging an unfair labor practice under the FPAA ~~or a prohibited practice under the MECBA~~. The final pre-hearing conference may be conducted by telephone when the mutual convenience of the parties so requires. The Board may designate the Administrator of the Board, a hearing officer, or its legal counsel to conduct the final pre-hearing conference. Unless otherwise ordered, the Administrator of the Board shall conduct the final pre-hearing conference.

(b) **Party representation.** Parties shall be represented by attorneys unless appearing pro se.

(c) **Settlement; mediation or other alternative dispute resolution.** Prior to the final pre-hearing conference, each side shall confer with the client and discuss:

(1) the possibility of settlement; and

(2) the party's willingness to participate in mediation or some other form of alternative dispute resolution prior to the final pre-hearing conference.

(d) **Proposed Final Pre-Hearing Order.** Prior to the final pre-hearing conference, the parties shall confer and prepare a proposed Final Pre-Hearing Order. The complainant has the responsibility of submitting to the Board the proposed order not less than five (5) days before the scheduled pre-hearing conference. The proposed order shall include:

(1) a brief preliminary statement;

(2) a statement of relevant facts, to include facts to which the parties stipulate and facts in dispute;

(3) legal issues presented by each party, including defenses, and authority relied on;

(4) a final list of exhibits, including objections;

(5) a final list of witnesses, including addresses, telephone numbers and proposed testimony;

and,

(6) the possibility of settlement.

(e) **Pre-hearing actions.** At the final pre-hearing conference, the parties shall cooperate to attempt to simplify or resolve issues, stipulate, determine if a hearing is necessary or if the matter can be resolved on briefs, settle the case or take other action in furtherance of the proper resolution of the case.

(f) **Discovery.** Discovery, as authorized by the Administrative Procedures Act, shall be completed prior to the final pre-hearing conference.

(g) **Deadlines for cases decided on stipulated facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided on stipulated facts:

(1) date for filing statement of stipulated facts, list of exhibits stipulated to and six (6) copies of these exhibits;

(2) date Complainant's brief is due; and

(3) respondent's brief is due within eighteen (18) days of the filing with the Board of the Complainant's brief.

(h) **Deadlines for cases decided with disputed facts.** At the pre-hearing conference, the person conducting the hearing will enter the following deadlines for cases decided with disputed facts:

(1) Date for filing joint statement of relevant facts to which parties can stipulate [(10 days before hearing) See 585:2-7-14.];

(2) Date for each party to file a statement of relevant facts in dispute [(10 days before hearing) See 585:2-7-14];

(3) Date for filing joint list of admissible exhibits [(10 days before hearing) See 585:2-7-14];

(4) Date for filing list of exhibits to which the parties can not stipulate and the opposing party's objections thereto [(10 days before hearing) See 585:2-7-14);

(5) Date for filing final witness lists [(10 days before hearing) See 585:2-7-14];

(6) Date for exchange of exhibits and for filing the original and six (6) copies of each exhibit [(7 days before hearing) See 585:2-7-14];

(7) Date for filing hearing briefs [(7 days before hearing) See 585:2-7-14];

(8) Date for filing any motions in limine [(7 days before hearing) See 585:2-7-14];

(9) Hearing date;

(10) Date for each party to refile its statement of disputed facts with citations to the record added for each

disputed fact [(15 days after hearing) See 585:2-7-14]; and,

(11) Any other deadlines.

(i) **Final Pre-Hearing Order.** The Final Pre-Hearing Order shall be issued and signed by the person conducting the pre-hearing conference. The Final Pre-Hearing Order supersedes all pleadings and shall not be amended except by order of the Board.

(j) **Default.** Failure to prepare and/or timely file the proposed Final Pre-Hearing Order, failure to be prepared for the final pre-hearing conference, or failure to participate in or participate in good faith in the pre-hearing conference may result in sanctions. These sanctions may include:

(1) dismissing the charge;
(2) striking a pleading;
(3) issuing a preclusion order;
(4) staying the action;
(5) entering default judgment;
(6) removal of a party's attorney from the case; or,
(7) other sanctions appropriate to the misconduct.

585:2-5-10. Impasse arbitration [REVOKED]

~~In the event of an impasse in negotiations under the MECBA, if the parties are unable to jointly agree on an arbitrator, they may request from the Board a list of seven (7) arbitrators as provided in 11 O.S., §51-214 and 585:2-1-3. The Board shall provide a list of seven (7) arbitrators as defined in 585:2-1-3.~~

SUBCHAPTER 7. HEARINGS

585:2-7-3. Motions

(a) **Recognized motions.** The Board recognizes all motions permitted under the Oklahoma Pleading Code, 12 O.S., §~~201~~2001 et seq. as well as a party's motion requesting the Board to defer to either pending or completed grievance arbitration.

(b) **Recorded motions.** All motions made during a hearing shall be made part of the record of the proceedings.

(c) **Motion requirements.** All motions, other than those made during a hearing, shall be subject to the following:

(1) **General contents.** Such motions shall be made in writing to the Board, shall briefly state the relief sought, and shall be combined with a brief containing a statement of relevant facts and legal argument with citations to relevant legal authority.

(2) **Format; size; filing date of certain motions.**

(A) No combined motion/brief shall be submitted that is longer than fifteen (15) typewritten pages without leave of the Board.

(B) The print style, including footnotes, shall not be less than ten (10) characters to an inch (i.e., 12 pitch font), and margins shall be a minimum of one inch on the top, bottom, and sides.

(C) Oversized briefs are not encouraged, and leave to file oversized briefs will not be freely given.

(D) A motion to file a combined motion/brief in excess of fifteen (15) typewritten pages shall state the requested number of pages and shall be filed no later than three (3) days prior to the date the motion/brief is due.

(3) **Required appendix to motion/brief.** Each party shall attach to that party's motion/brief as an appendix a copy of significant legal authority cited in the brief not readily accessible by the Board such as federal statutes and court cases, NLRB cases, and treatises. The Board has ready access to Oklahoma statutes and cases decided by Oklahoma state courts and to previous Board decisions.

(4) **Affidavits.** Affidavits regarding factual matters may be attached to the motion/brief if necessary.

(5) **Deadlines.** Deadlines for filing motions are set in the Final Pre-Hearing Order.

(6) **Service of motion/brief by moving party.** The moving party shall, concurrently with filing with the Board, serve a copy of the motion/brief on all other parties.

(7) **Response or objection to motion/brief.** Any response or objection to the motion/brief shall be subject to the same requirements as motions/briefs, shall be filed with the Board within eighteen (18) days from the date the motion/brief was filed with the Board and shall be served on all parties.

(8) **Board hearing of oral argument or testimony.** The Board may decide to hear oral argument or testimony thereon, in which case the Board shall notify the parties of such fact and of the time and place of such argument or the taking of such testimony.

(d) **Board's lack of jurisdiction or necessary legal authority.** In the event that the Board determines that it lacks jurisdiction or necessary legal authority to rule upon any filed motion, it shall promptly so advise the parties.

585:2-7-12. Burden of proof

The charging party, in asserting an unfair labor practice under the FPAA ~~or a prohibited practice under the MECBA~~, shall have the burden of going forward and of proving the allegations by a preponderance of the ~~evidence~~ testimony taken. The party raising any subsequent issue shall have the burden of proving that issue by a preponderance of the ~~evidence~~ testimony taken.

[OAR Docket #12-710; filed 5-24-12]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 30. UNFAIR LABOR PRACTICE AND PROHIBITED PRACTICE CHARGES

[OAR Docket #12-711]

RULEMAKING ACTION:
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RULES:
585:30-1-1 through 30-1-8 [AMENDED]

AUTHORITY:
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The permanent rule revisions to Chapter 30 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq) effective November 1, 2011. All rules referencing this Act have been deleted.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Department of Central Services, 2401 North Lincoln Boulevard, Room 206, Oklahoma City, OK 73105, 405-522-6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

585:30-1-1. Purpose

The rules of this chapter have been adopted for the purpose of providing information concerning the filing of unfair labor practice charges ~~and prohibited practice charges~~, answers, counterclaims and motions, and the informal disposition of such claims, pursuant to Section 51-104b of the FPAA ~~and Section 51-29 of the MECBA~~.

585:30-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA~~, the MECBA~~ and these Rules unless their context clearly indicates otherwise.

585:30-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to ~~74~~ 11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

~~**"MECBA"** means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.~~

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:30-1-4. Complaint

(a) **General.** A complaint that any person, organization, or municipal employer has engaged in or is engaging in an unfair labor practice under the FPAA ~~or a prohibited practice under the MECBA~~ may be filed by any person, employee organization or municipal employer. See 585:2-5-5.

(b) **Execution; format.** A complaint shall be in writing and signed in accordance with 585:2-5-1, and shall be in a form authorized by the Board.

(c) **Number of copies.** The complaint and six (6) copies shall be filed with the Board.

(d) **Required contents.** The complaint shall include the following:

(1) The name and address and organizational affiliation, if any, of the complainant, and the title of any representative filing the complaint.

(2) The name and address of the respondent or respondents and any other party named therein.

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice ~~or the prohibited practice~~, including the names of the individuals involved in the alleged act, the dates and places of the alleged occurrence, and the specific section or sections of the FPAA ~~or the MECBA~~ alleged to have been violated. The purpose of the complaint is to apprise the respondent fairly of the substance of the complaint against it. The sufficiency of a complaint may be challenged by motion, answer or other responsive pleading.

585:30-1-5. Answer

(a) **Filing; filing time limit.** A respondent shall file a written answer, or other responsive pleading permitted by these

rules, with certificate of service, to an unfair labor practice complaint filed under the FPAA ~~or to a prohibited practice complaint filed under MECBA~~ within ten (10) days after service of the complaint.

(b) **Contents.** The answer shall contain the following:

(1) A specific admission, denial, or explanation of each allegation of the complaint, or, if respondent is without knowledge thereof, respondent shall so state and that statement shall constitute a denial. Admissions or denials may be made to all or part of the allegation, but shall fairly meet the substance of the allegation.

(2) A specific and appropriately detailed statement of any defense.

(3) A clear and concise statement of the facts and matters of law relied upon constituting any grounds of defense.

(c) **Default.** If the respondent fails timely to file an answer or other permitted or required responsive pleading, such failure is subject to the sanctions set out in 585:2-3-7. In extraordinary circumstances, as determined by the Board, the Board may extend the time within which the answer shall be filed.

585:30-1-6. Informal disposition

(a) Any unfair labor practice case ~~or prohibited practice~~ case commenced with the Board may be informally settled by stipulation, agreed settlement, consent order, default, or by any other method agreed upon by the parties in writing.

(b) Evidence of any proposed offer of settlement of an unfair labor practice complaint ~~or prohibited practice complaint~~ shall be inadmissible at the hearing thereon.

585:30-1-7. Violation of the FPAA ~~and the MECBA~~

Violation of the FPAA ~~or violation of the MECBA~~ may result in enforcement pursuant to state statute.

585:30-1-8. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA ~~and the MECBA~~.

[OAR Docket #12-711; filed 5-24-12]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 35. CERTIFICATION CASES

[OAR Docket #12-712]

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Subchapter 1. General Provisions
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Subchapter 5. Representation Petitions Under the MECBA
585:35-5-1 through 35-5-8 [REVOKED]
Subchapter 7. Elections
585:35-7-1 through 585:35-7-2 [AMENDED]

AUTHORITY:
The Fire And Police Arbitration Act; Title 11 O.S., §51-104(D)
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ANALYSIS:
The permanent rule revisions to Chapter 35 provide consistency with the repeal of the Oklahoma Municipal Employee Collective Bargaining Act ("MECBA") by the Oklahoma Legislature (11 O.S. §51-200 et seq) effective November 1, 2011. All rules referencing this Act have been deleted.
CONTACT PERSON:
Debbie Tiehen, Administrator, Public Employees Relations Board, Department of Central Services, 2401 North Lincoln Boulevard, Room 206, Oklahoma City, OK 73105, 405-522-6723

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

585:35-1-1. Purpose

The rules of this chapter provide procedures for filing representation and decertification petitions; set out the requirements for the content of petitions and for show of interest; the responsibilities of corporate authorities; bars to an election; unit determination; and other matters concerning representation petitions; pursuant to 11 O.S., §51-103 of the Fire and Police Arbitration Act (FPAA) ~~and 11 O.S., §51-211 and §51-212 of the Municipal Employees Collective Bargaining Act (MECBA)~~.

585:35-1-2. Statutory definitions

Terms used in this Chapter shall have the same meaning as defined in the FPAA~~, the MECBA~~ and these Rules unless their context clearly indicates otherwise.

585:35-1-3. Additional definitions

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

"Administrator" or "Administrator of the Board" means the program administrator of the Board appointed pursuant to ~~74~~ 11 O.S., §51-104a.

"APA" means the Oklahoma Administrative Procedures Act, 75 O.S., §250, et seq.

"Arbitrator" means a person carried on the list of arbitrators maintained by the Federal Mediation and Conciliation Service who is located in the region in which Oklahoma is located.

"Board" or **"PERB"** means the Public Employees Relations Board.

"FPAA" means the Fire and Police Arbitration Act, 11 O.S., §51-101, et seq.

"Hearing Officer" means that individual designated by the Board to conduct a hearing. This individual must meet the definition of "Hearing Examiner" set out in 75 O.S. §250.3.

~~**"MECBA"** means the Municipal Employees Collective Bargaining Act, 11 O.S., §51-20, et seq.~~

"Party" means any person, employee organization or municipal employer named and participating in, or properly seeking and entitled by law to participate in, an individual proceeding; or whose motion to intervene has been granted by the Board.

"Quorum" means two members of the Board comprise a majority and shall constitute a quorum and may transact any business or hold any hearing by a unanimous vote of the quorum. Any action of the Board shall require the affirmative vote of two members.

585:35-1-4. Violation of the FPAA ~~and the MECBA~~

Violation of the FPAA ~~and the MECBA~~ may result in enforcement pursuant to state statute.

585:35-1-5. Liberal construction

The rules of this chapter shall be construed liberally to effectuate the purposes and provisions of the FPAA ~~and the MECBA~~.

SUBCHAPTER 5. REPRESENTATION PETITIONS UNDER THE MECBA [REVOKED]

585:35-5-1. Petition for bargaining unit determination [REVOKED]

~~(a) A petition for Board determination of an appropriate bargaining unit shall be filed by an employee organization.~~

~~(b) The petition shall state the name of the organization seeking unit determination and the description of the unit. The petition shall be accompanied by written evidence of interest defined as submission of cards indicating interest from at least thirty (30%) percent of the employees in the proposed unit.~~

~~(c) Petitions to determine a separate bargaining unit from a unit previously certified by the Board shall follow the same procedures as set out herein.~~

585:35-5-2. Petition for certification or decertification [REVOKED]

~~(a) **Filing.** A certification or decertification petition may be filed with the Board by:~~

~~(1) A municipal employee or employee organization alleging that at least thirty (30%) percent of the non-fire and police municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by an employee organization; or~~

~~(2) A municipal employee or employee organization alleging that fifty (50%) or more percent of the municipal employees in an appropriate bargaining unit assert that the designated exclusive employee organization no longer represents the majority of the municipal employees in the unit.~~

~~(b) **Petition for certification with an election contents.** A petition for certification with an election shall contain the following:~~

~~(1) The name, affiliation, if any, telephone number and address of the petitioner;~~

~~(2) A statement as to whether the petition is filed by an employee organization or by a municipal employee;~~

~~(3) The names and addresses of all other parties proper to the proceeding;~~

~~(4) A description of the bargaining unit which the petitioner claims to be appropriate;~~

~~(5) Written evidence that the bargaining agent is authorized to represent at least thirty percent (30%) of the employees within the claimed bargaining unit;~~

~~(6) The number of employees in the alleged appropriate unit;~~

~~(7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and~~

~~(8) Any other relevant facts.~~

~~(c) **Petition for certification without an election contents.** A petition for certification without an election shall contain the following:~~

~~(1) The name, affiliation, if any, telephone number and address of the petitioner;~~

~~(2) A statement as to whether the petition is filed by a bargaining agent or by a municipal employee;~~

~~(3) The name and address of all other parties proper to the proceeding;~~

~~(4) A description of the bargaining unit which the petitioner claims to be appropriate;~~

~~(5) Written evidence that the bargaining agent is authorized to represent a majority of the employees within the claimed bargaining unit;~~

~~(6) The number of employees in the alleged appropriate unit;~~

~~(7) The names and addresses of any other employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit; and~~

~~(8) Any other relevant fact or facts.~~

~~(d) **Petition for decertification.** A petition for decertification shall contain a description of the bargaining unit subject to the petition and a statement, accompanied by written evidence that fifty percent (50%) of the employees [within the claimed bargaining unit] do not want to be represented by the exclusive bargaining representative or seek certification of a different employee organization.~~

~~(e) **Board's notice of receipt of petition.** The Board shall give reasonable notice of the receipt of the petition to all municipal employees, employee organizations, and municipal employers named or described in such petitions or interested in the representation question.~~

585:35-5-3. Bargaining unit determination [REVOKED]

~~(a) The Board shall determine whether the cards received establish interest from at least thirty (30%) percent of the employees in the proposed unit. If the petitioner and the municipal employer agree on the organizational structure of the appropriate unit but disagree as to which employees are included in the appropriate unit based on the duties of the individual employee(s) (such as, but not limited to, supervisory, confidential, or management official designations), the Board shall first determine the appropriate bargaining unit and then determine whether the cards received establish interest from at least thirty percent (30%) of the employees in the unit.~~

~~(b) If the dispute as to which employees are included in the appropriate unit does not affect the petitioner's majority status, the Board shall issue a certification without an election and then determine if the challenged employees are included in the appropriate unit. If the bargaining unit dispute affects the employee organization's majority status, the Board shall determine the appropriate bargaining unit and subsequently determine majority status.~~

585:35-5-4. Disposition [REVOKED]

~~(a) If the Board does not receive a claim for representation accompanied by a thirty percent (30%) showing of interest from a rival employee organization within fifteen (15) days of the filing of the initial petition, it shall issue a certification of representation upon validating that a majority of employees in an appropriate bargaining unit have authorized the employee organization to represent them for purposes of collective bargaining.~~

~~(b) If the Board receives a valid claim for representation by a rival employee organization within the fifteen (15) day period, it shall consider the initial petition for certification without an election as a petition for a representation election.~~

~~(c) Whenever a petition for an election is filed by an employee or employee organization with evidence of representation or legitimate interest of at least thirty percent (30%) of the municipal employees in an appropriate bargaining unit, or with evidence of representation or legitimate interest of at least fifty percent (50%) of the municipal employees in an appropriate unit in the case of decertification, the Board shall conduct a secret ballot representation election to determine whether the municipal employees in the appropriate bargaining unit wish to be represented by an exclusive bargaining representative.~~

585:35-5-5. Bars to an election [REVOKED]

~~Notwithstanding the filing or pendency of an election petition, the Board shall conduct no representation election when either of the following conditions exist:~~

~~(1) **Election bar; existence of collective bargaining agreement.** A petition for decertification or certification of an exclusive bargaining representative shall not be considered by the Board for a period of one (1) year from the date of the certification or noncertification of an exclusive bargaining representative or during the duration of a collective bargaining agreement unless the petition for decertification is filed not more than ninety (90) days prior to the expiration of the collective bargaining agreement; or~~

~~(2) **Disclaimer of representation.** Notwithstanding the provisions of (1) of this subsection, the Board will process a valid decertification petition accompanied by an adequate show of interest as required by 585:35-5-2 at any time if the certified employee organization files a disclaimer of representation. A disclaimer of representation is a statement signed by an authorized representative of the certified employee organization, stating that the employee organization wishes to disclaim representation of the employees in the certified bargaining unit.~~

585:35-5-6. Evidence of representation or legitimate interest; authorization cards [REVOKED]

~~Evidence of representation or legitimate interest may be by individual authorization cards, membership records, or by petition. In any case, the petition, membership records, or authorization cards must show the address and be signed and dated by the employee expressing an intent to be represented by a specific bargaining agent. Cards shall be considered valid if the dates thereon, and other evidence provided to the Board, indicate a regularity of continuing interest by the employees signing the petition or authorization cards. Such evidence of interest shall be presumed if the cards or other evidence of interest are signed within 180 days of the filing date.~~

585:35-5-7. Showing of interest; determination of adequacy [REVOKED]

~~The showing of interest submitted to the Board shall not be furnished to any of the opposing parties. The Board alone shall determine the adequacy of the showing of interest and the Board's decision shall not be subject to collateral attack.~~

585:35-5-8. Responsibilities of municipal employer [REVOKED]

~~The municipal employer shall furnish the Board, within twenty (20) days of receipt of a notice from the Board, an alphabetical list of names, departments and job titles of all employees within the proposed bargaining unit as described in the~~

~~petition. The list of employees shall be as shown by the payroll for the period immediately preceding the date on which the petition for representation was filed with the Board. Failure by the municipal employer to furnish such a list within the time allowed may be deemed to be an admission of the sufficiency of the petitioner's showing of interest.~~

SUBCHAPTER 7. ELECTIONS

585:35-7-1. Election procedure

The following procedure shall be followed when conducting an election to determine the exclusive bargaining agent for a unit:

(1) **General.** All elections shall be by secret ballot, at times, places, and in such manner as the Board may direct, and may be conducted by the Administrator of the Board or a designated agent of the Board, whose determination of all questions arising shall be final, subject, however, to review by the Board.

(2) **Ballots.**

(A) Ballots shall be prepared and issued by the Board. The color of the ballot must not be disclosed to any of the parties prior to the opening of the polls. Ballots shall contain the name of each bargaining agent and a choice of "no representative" in inclusive elections.

(B) The places on the ballot shall be based on agreement among the parties if there is an agreement and on chance if there is no agreement among the parties. In the case of a run-off election involving two bargaining agents, their position on the ballot shall be the same as their position on the ballot during the first election.

(3) **Observers.** Each party to an election shall be entitled to be represented by an equal number of observers at each polling place. Observers on behalf of a bargaining agent shall be employees eligible to vote or other appropriate employees not on the list of eligible voters, but excluding supervisors and administrative officials except in cases of a supervisory unit.

(4) **Polling area; electioneering.** Prior to the commencement of the election, the agent of the Board shall designate the polling area and no electioneering of any kind shall be permitted within this area. Any violation of the rule by any party or its representative or agent may be grounds for setting aside the election.

(5) **Challenged ballots.** Any prospective voter may be challenged for cause. A challenged voter shall be permitted to vote but the ballot shall not be cast. It shall instead be sealed in a separate, unmarked envelope under the supervision of the agent of the Board, and then inserted in a special identifiable form envelope provided by the Board for that purpose, and then placed in the ballot box.

(6) **Pre-election conference.**

(A) A pre-election conference shall be held before the election to check the eligibility list.

(i) Employee organizations may examine the eligibility list, and raise any questions concerning listings or omissions.

(ii) Names may be added or deleted from the list.

(I) Where an employee organization asserts that a name should be added and the municipal employer disagrees, the name shall not be added to the list, but it shall be understood that the individual may appear at the voting place to present a challenged ballot.

(II) Where an employee organization contends that a name should be stricken from the list, but no agreement is reached, the organization's observer may challenge the voter, but it shall be understood that the individual may appear at the voting place to present a challenged ballot.

(B) After the list has been checked, all parties should initial the list, and the initialed list will be the official eligibility list. Initialing is not to be construed as a waiver of the right of challenge.

(7) **Majority.** In all elections, a majority of the valid votes cast shall determine the exclusive bargaining agent designated or selected by the employees in the defined appropriate unit; or the determination that no representative has been designated.

(8) **Canvass.** Each party to the election shall be permitted to observe the canvass of the ballots.

(9) **Objections.** All objections to any party's conduct during an election and all exceptions to the Board's conduct of an election, shall be filed within five (5) days of the closing of the polls with copies of the same being mailed to all parties in the proceeding with postage prepaid thereon. The Board shall take such action as is reasonably calculated to accomplish the objectives and to carry out the duties prescribed by the FPAA ~~and the MECBA~~.

(10) **Run-off election.** The Board shall conduct a run-off election when an election in which the ballot provided for not less than three (3) choices, i.e., at least two representatives, resulted in no choice receiving a majority of the valid ballots cast. The ballot in the run-off election shall provide for a selection between the two choices receiving the largest number of votes. The Board shall conduct the run-off election expeditiously.

585:35-7-2. Certification of election results

(a) If the challenged ballots are insufficient in number to affect the result of an election to determine an exclusive bargaining agent, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification of an exclusive bargaining agent, where appropriate.

(b) If the challenged ballots are sufficient in number to affect the results of an election, the Board shall determine the adequacy of the challenged ballots. Once the Board has made a ruling on the challenged ballots, they shall be counted

accordingly and the Board shall then certify the results of the election.

(c) The Board's certification as to the result of the election and the exclusive bargaining agent shall be final, subject only to being modified, revoked, or sustained in a hearing on any objections to the conduct of the parties or conduct of the Board. Time for appeal shall not commence to run until such time as the Board issues an order on any objections filed as to the conduct of the parties or conduct of the Board.

(d) The Board may also certify a labor organization as the exclusive bargaining agent if it determines that a free and untrammeled election cannot be conducted because of the employer's unfair labor practice ~~or prohibited practice~~.

[OAR Docket #12-712; filed 5-24-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 1. GENERAL RULES OF THE DEPARTMENT OF PUBLIC SAFETY

[OAR Docket #12-718]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 15. Sale and Auction of Surplus and Forfeited Property
595:1-15-3. Sale of surplus property [AMENDED]
AUTHORITY:
Commissioner of Public Safety 47 O.S., § 2-123.
DATES:
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No hearing was held or requested.
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N/A
ANALYSIS:
Amendments to this rule would modify the method at which the minimum sale price of equipment to be sold at auction would be calculated.

The proposed actions are amendments to existing rules and creation of new rules.

The circumstance which created the need for these rules is the increased value retention of equipment sold at auction.

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

CONTACT PERSON:
David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 15. SALE AND AUCTION OF SURPLUS AND FORFEITED PROPERTY

595:1-15-3. Sale of surplus property

(a) **Limitation.** The Department shall offer for sale and actually sell surplus property only to an agency. As used is this section, "sale" means direct sale to an agency, not as the result of a purchase at an auction.

(b) **Obtaining information regarding surplus property for sale.**

(1) **Availability of surplus property.** Any agency may contact the Director regarding the availability of surplus property for sale. The Director will provide a list of surplus property available for sale at that time.

(2) **Contact.** The Director may be contacted by:

(A) Telephone: (405) 425-2122

(B) Mail: Department of Public Safety, Director of Transportation, P.O. Box 11415, Oklahoma City, OK 73136-0415.

(C) Fax: (405) 425-2304

(D) E-mail: ~~bholars@dps.state.ok.us~~dblackle@dps.state.ok.us

(3) **Examining surplus property.** If surplus property is available, the agency may visit the Department, or another location as indicated by the Department, during regular business hours (8am to 4:30pm) to examine and, if desired, purchase surplus property.

(4) **Location.** Surplus property, when available, is located at the Garage at the headquarters of the Department, 2300 NE 36th Street, Oklahoma City, OK unless another location has been indicated by the Department. The Garage is located on the south side of NE 36th Street between Interstate 35 and North M. L. King Avenue, approximately one-half block east of North M. L. King Avenue.

(c) **Pricing.**

(1) **Vehicles.** Prices of surplus vehicles are based upon the guidelines from the most current edition of the National Automobile Dealers Association Official Used Car Guide.

(2) **Equipment.** Prices of surplus equipment are based upon twenty-five percent (25%) to fifty percent (50%) ~~to seventy-five percent (75%)~~ depreciation of the original price of the equipment or upon the current market value of the equipment, whichever is higher.

(d) **Payment.** Payment shall be made to the Department prior to delivery of the surplus property to the purchasing agency and shall be accepted only in one of the following methods:

(1) Agency purchase order. The purchase order shall be on a form adopted by the purchasing agency and signed by an agency employee authorized to do so.

(2) Agency check, claim, or warrant.

(e) **Terms of sale.**

(1) Surplus property is sold "as is - where is" with no warranty implied or given by the Department.

(2) Surplus property which has been purchased can not be returned to the Department.

(3) If requested, the Department will provide the purchasing agency with an invoice. If the surplus property purchased is or includes a vehicle, the Department will also provide the title to the vehicle and a letter which will give authority for the agency to drive the vehicle from the Department to another location without a license plate [47 O.S. § 1132(B)]. No title will be provided until payment-in-full is confirmed. The purchasing agency is responsible for transfer of title of any vehicle purchased.

(4) All sales will be transacted in good faith. Payment-in-full on a purchase order is due within forty-five (45) days of the sale. Failure to pay authorizes the Department to repossess any surplus property for which payment-in-full has not been received.

(5) Prior to sale, all identifying decals and insignias on a patrol vehicle will be removed by the Department and the vehicle will be repainted, as necessary, by the Department. No patrol vehicle shall be sold with the intent that the vehicle represent the Oklahoma Highway Patrol.

[OAR Docket #12-718; filed 5-24-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. CLASS D DRIVER LICENSES AND IDENTIFICATION CARDS AND MOTOR LICENSE AGENT PROCEDURES

[OAR Docket #12-719]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 1. Purpose
595:10-1-1. Purpose [AMENDED]
Part 2. Application for Initial Driver License
595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]
595:10-1-5. Graduated driver license; persons under eighteen (18) years of age [AMENDED]
595:10-1-8. Applicability, substitutions, limitations, and additions to federal rules adopted by reference [REVOKED]
595:10-1-9. Waiver of certain physical conditions for Class A, B, or C commercial driver license applicants [REVOKED]
Part 3. Driver License Renewal
595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]
595:10-1-12. Oklahoma licensee temporarily residing out of the state [AMENDED]
Part 5. Driver License Replacement
595:10-1-18. Procedure for obtaining a replacement driver license [AMENDED]
595:10-1-19. Oklahoma licensee temporarily residing out of the state [REVOKED]
Part 7. Identification Cards
595:10-1-27. Procedure for obtaining a replacement identification card [AMENDED]
595:10-1-28. Oklahoma identification card holder temporarily residing out of the state [AMENDED]
Part 9. Change of Name on a Driver License or Identification Card
595:10-1-35. Procedure to make a change of name on a driver license or an identification card [AMENDED]
Part 13. Motor License Agents
595:10-1-50. Identification required [AMENDED]
595:10-1-51. Operational procedures [AMENDED]
595:10-1-56. Renewal of driver license or identification cards [AMENDED]
Part 19. Driver License and Identification Card Content
595:10-1-91. Information displayed on driver licenses [AMENDED]
595:10-1-92. Driving restriction codes [AMENDED]
595:10-1-93. Information displayed on identification cards [AMENDED]
Subchapter 3. Examination
595:10-3-1. Purpose [AMENDED]
595:10-3-4. Application for examination [AMENDED]
595:10-3-9. Skills examination [AMENDED]
Subchapter 5. Medical Aspects
Part 1. Medical Conditions
595:10-5-5. Metabolic diseases [AMENDED]
Subchapter 13. Parent-taught Driver Education
595:10-13-5. Requirements for parents and students [AMENDED]

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SUPERSEDED EMERGENCY ACTIONS:
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Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card
Part 19. Driver License and Identification Card Content
595:10-1-92. Driving restriction codes [AMENDED]
Gubernatorial approval:
September 12, 2011
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29 Ok Reg 52
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11-1026

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
Amendments to this chapter would update procedures relating to the issuance of driver licenses and identification cards, motor license agent

activities, and parent-taught driver education and continue to separate commercial driver license requirements from regular Class D driver license requirements.

The proposed actions are amendments to existing rules.

The circumstances which created the need for these rules are the need to update information related to the issuance of driver licenses and identification cards, motor license agent activities, and parent-taught driver education and to comply with ESB 1908 (2010) regarding graduated driver licenses, curfew hours, and prohibited use of electronic communication devices.

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

CONTACT PERSON:

David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. PROCEDURES FOR OBTAINING AND MAINTAINING A DRIVER LICENSE OR IDENTIFICATION CARD

PART 1. PURPOSE

595:10-1-1. Purpose

(a) The Department of Public Safety issues driver licenses and identification cards to qualified applicants and renews and replaces licenses and cards for licensees and cardholders who maintain their licenses and cards in accordance with this Subchapter. This Subchapter establishes how to apply for an initial, renewal, or replacement Class D driver license or an identification card, what identification is required, how to change information on the license or card, and procedures for motor license agents.

(b) OAC 595:11 establishes how to apply for an initial, renewal or replacement commercial driver license (Class A, B or C driver license).

(c) Procedures in this Chapter for motor license agents shall apply equally to Class D driver licenses and identification cards and to commercial driver licenses. Procedures in this Chapter regarding medical conditions [see Subchapter 5] shall apply both to Class D driver licenses and to commercial driver licenses. Procedures in this Chapter regarding the points system [see Subchapter 7] shall apply both to Class D driver licenses and to commercial driver licenses. Procedures in this Subchapter regarding revocation and suspension [see Part 15] shall apply both to Class D driver licenses and commercial driver licenses.

(d) Applications, signatures, and forms may be completed and submitted electronically when an electronic process is made available by the Department of Public Safety.

(e) For the purposes of this Chapter:

(1) **"Parent"** means a biological or adoptive parent who has actual physical and legal custody of a minor under the age of eighteen (18) years.

(2) **"Guardian"** means any person over the age of twenty-one (21) years who has actual physical and legal custody of a minor under the age of eighteen (18) years.

(3) **"Class D driver license"** shall mean any driver license which authorizes only the operation of a Class D motor vehicle, as defined in 47 O.S., §1-107.4, including but not limited to a learner's permit and an intermediate Class D driver license, as prescribed in 47 O.S., §6-105 and OAC 595:10-1-5, except when the context otherwise excludes a learner's permit or an intermediate Class D driver license or both.

PART 2. APPLICATION FOR INITIAL DRIVER LICENSE

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

(a) **Application.** Every applicant for an initial Oklahoma driver license ~~must first~~shall appear before a Driver License Examiner [47 O.S. §6-110]. An application for a driver license must be completed either by the applicant at the Driver License Examination Station or online, when an electronic process is made available by the Department of Public Safety, prior to the commencement of the required examination. An emergency contact name, address and phone number may be included on the application, which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only. Upon submitting a completed and approved application, providing proof of identity [see (b) regarding required identification documents] and proof that the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], meeting all statutory requirements, and successfully completing every required examination [see Subchapter 3 of this Chapter relating to examinations], the applicant may then proceed to a motor license agent or the Department of Public Safety Headquarters, Driver License Examining Division, with a DL-10 form with primary and secondary identification presented to the examiner, issued by the Driver License Examiner, and pay the required fees and be issued a driver license. A person who has been declared to be a disabled veteran in receipt of compensation at the 100% rate for a permanent disability shall receive an original, renewal, or replacement driver license or identification card at no charge, upon presentation of one of the following documents:

(1) proof of 100% status from the U.S. Department of Veterans Affairs, or

(2) a tax exempt card from the Oklahoma Tax Commission showing exemption from state tax based upon 100% status.

(b) **Required identification.** Every applicant must furnish both primary documentary proof of identity [47 O.S., § 6-106(A)(3)], to include whether the applicant is a United States citizen, foreign national or a legal permanent resident alien [21 O.S., § 1550.42(B)], and secondary documentary proof of identity [47 O.S., § 6-106(A)(3)] and proof of full

legal name and birth date beyond any reasonable doubt when applying for an initial Oklahoma driver license [47 O.S. § 6-101(L)]. Any document furnished must be either a certified or original copy and issued by the proper authority; notarized documents will not be accepted. Any document that has been or appears to have been duplicated, traced over, mutilated, defaced, tampered with, or altered in any manner or that can not be read by the Driver License Examiner shall not be accepted or used for identification purposes. All identification documents must be approved by the Examiner before acceptance. The Examiner may, at his or her discretion, request additional identification documentation of the applicant.

(1) **Primary proof of identification for original issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) A certified birth certificate, as issued by the appropriate state agency from the state of birth. A certified birth certificate issued by a city or county may be accepted if it is issued on secure document paper and if the certificate either is from a state which the Department has verified authorizes the issuance of birth certificates certified by a city or county or contains a statement indicating the record is a copy of the facts on file with the state agency responsible for maintaining and certifying vital records. The birth certificate shall include the person's name, date of birth, and sex, shall be signed and sealed, and shall include the certificate number. The following documents are not acceptable:

(i) a hospital birth certificate or record,

(ii) a birth registration, or

(iii) an abstract of birth, unless the abstract is issued on secure ~~docment~~ document paper and contains the following statement "I hereby certify that this abstract of birth facts has been provided to this office by the Department of Health, Bureau of Vital Statistics, from a document officially in its custody",

(B) A United States passport,

(C) For a United States citizen who is born in another country, a certification issued by the United States Department of State,

(D) For a naturalized citizen of the United States, a Certificate of Naturalization issued by the United States Citizenship and Immigration Service. The name on the document must be the same as the name used by the applicant on the driver license or identification card,

(E) An Oklahoma driver license originally issued by Department of Public Safety on or after November 1, 2007,

(F) A State of Oklahoma identification card originally issued by the Department of Public Safety on or after November 1, 2007, or

(G) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(2) **Primary proof of identification for renewal or replacement issuance to a United States citizen.** The following shall be presented by the applicant as primary proof of identification for a citizen of the United States:

(A) Finger image comparison, if a Department-generated finger image algorithm is already on file with the Department, or

(B) Any primary proof of identification listed in (1) of this subsection.

(3) **Primary proof of identification for original, renewal, or replacement issuance to a foreign national or legal permanent resident alien.** The following shall be presented by the applicant as primary proof of identification and proof of lawful presence in the United States for a foreign national or legal permanent resident alien:

(A) A passport issued by a country other than the United States and I-94 card, when applicable. The name on the passport shall be the same as the name used by the applicant on the driver license or identification card. An I-94 card, which shall be accompanied by the applicant's passport when applicable, shall not be considered a separate identification document. The following documents or passport classifications shall be accepted for the purpose of issuing a driver license or identification card:

(i) I-688 Temporary Resident Card,

(ii) I-688A/B Employment Authorization Card,

(iii) I-766 Employment Authorization Card,

(iv) I-551 Resident Alien/Permanent Resident Card [see (B)],

(v) Temporary I-551,

(vi) A-1,

(vii) A-2,

(viii) A-3,

(ix) DA,

(x) E-1,

(xi) E-2,

(xii) F-1, with Form I-20,

(xiii) F-2, with Form I-20,

(xiv) G-1,

(xv) G-2,

(xvi) G-3,

(xvii) G-4,

(xviii) G-5,

(xix) H-1A,

(xx) H-2A,

(xxi) H-1B,

(xxii) H-2B,

(xxiii) H-3,

(xxiv) H-4,

(xxv) I,

(xxvi) J-1, with IAP-66 or DS-2019,

(xxvii) J-2 (dependent of J-1 holder, must be accompanied by J-1 holder),

(xxviii) K-3,
(xxix) K-4,
(xxx) L-1(a/b),
(xxxi) L-2,
(xxxii) M-1, with I-20,
(xxxiii) M-2 (dependent of M-1 holder, must be accompanied by M-1 holder),
(xxxiv) NATO-1,
(xxxv) NATO-2,
(xxxvi) NATO-3,
(xxxvii) NATO-4,
(xxxvii) NATO-5,
(xxxix) NATO-6,
(xl) NATO-7,
(xli) O-1
(xlii) O-2
(xliii) O-3
(xliv) P-1
(xlv) P-2
(xlvi) P-3
(xlvii) P-4
(xlviii) Q-1
(xlix) R-1
(l) R-2
(li) T-1
(lii) T-2
(liii) T-3
(liv) T-4
(lv) TC, with I-94 or letter form I-797,
(lvi) TN-1,
(lvii) TN-2,
(lviii) TD,
(lix) V-1,
(lx) V-2,
(lxi) V-3; or

(B) A permanent resident alien registration card issued by the United States Citizenship and Immigration Service (USCIS) which shall include the name, sex, and date of birth of the person identified in the card. The name, sex, and date of birth on the card shall be the name, sex, and date of birth used by the applicant on the driver license or identification card. A permanent resident alien registration card holder shall be allowed to renew his or her driver license or identification card at a motor license agency, provided, no changes are made to the name, sex, or date of birth. If, pursuant to 8 C.F.R., Section 264.5, a permanent resident alien registration card holder requests a name, sex, or date of birth change to his or her driver license or identification card, the changes shall be made at a driver license exam site with the applicant showing approved documentation provided by USCIS verifying the changes; or

(C) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(4) **Secondary proof of identification.** The following shall be presented by the applicant as secondary proof of identification and shall contain the name of the applicant:

(A) Any primary proof of identification listed in (1), (2), or (3), as applicable, of this subsection which is not used as the primary identification document of the applicant,

(B) For any person under the age of 18, an affidavit provided by the Department and signed by the parent or legal guardian,

(C) Photo identification card that is issued by an Oklahoma:

(i) public, private, or parochial secondary school,
(ii) institution of higher education,
(iii) technology center school, or
(iv) employer,

(D) Oklahoma gun permit,
(E) Pilot license,
(F) Oklahoma lifetime hunting or fishing license,
(G) Oklahoma voter identification card,
(H) Social Security card,
(I) Health insurance card,
(J) Motor vehicle registration or title,
(K) Marriage certificate,
(L) Separation or divorce judgment,
(M) High school, technology center school, college, or university diploma
(N) Professional degree, certificate, or license,
(O) Deed or title to property in Oklahoma, including a burial plot deed,
(P) Health, life, or home insurance policy issued to the applicant,
(Q) Automobile insurance policy or security verification form issued to the applicant,
(R) A valid U.S.D.O.T. health card, as required by 49 C.F.R. Part 391,
(S) Digital photograph comparison, if a Department-generated digital photograph is already on file with the Department,
(T) Identification documents issued by the United States Armed Services:

(i) Military discharge (DD-214), unless specified not to be used for identification,
(ii) Military identification card, or
(iii) Military dependent identification card,

(U) United States Bureau of Indian Affairs identification card or a Oklahoma tribal photo identification card, approved by the Department of Public Safety (the Department shall maintain on its website a list of tribes which comply with this provision), which identifies the person and includes the following information:

(i) color photograph of the person,
(ii) full legal name of the person,
(iii) birth date of the person,
(iv) signature of the person,

(v) signature of person who verifies records, and

(vi) tribal seal,

(V) ~~Out-of-state driver license, if the issuing state participates in the REAL ID Act of 2005,~~

~~(W)~~ Expired Oklahoma Driver License,

(~~X~~W) Expired Oklahoma Identification Card,

(~~Y~~X) Oklahoma Tax Commission Agricultural Exemption Permit (tax exempt card),

(~~Z~~Y) Department of Corrections Consolidated Record Card,

(~~AA~~Z) Transportation Worker Identification Credential (TWIC card), or

(~~BB~~AA) If none of the forms of identification listed in this paragraph are available, any other documentation as approved by the Driver License Examiner Supervisor, Administrative Officer or Director, and listed on the DL-10 form by the Driver License Examiner.

(5) **Additional identification requirements.** The Department may require additional identification documents:

(A) when the Department is unable to determine the reliability or validity of the identification document(s) presented, or

(B) as provided in OAC 595:10-1-35.

(c) **Driver license numbers.**

(1) Driver license numbers shall be assigned by computer. Use of the applicant's Social Security number as the driver license number is prohibited [47 O.S. § 6-106(B)]; provided, every applicant shall provide the Department with the Social Security number of the applicant [47 O.S., § 6-106(B),12], which shall be verified before a driver license shall be issued to the applicant. Verification shall be accomplished using the Social Security On-line Verification (SSOLV) system. The Department shall refer any applicant to the Social Security Administration whenever the Social Security number can not be verified for the applicant.

(2) Any licensee may request to change his or her driver license number to any nine-digit number which is not in use or has not been previously used by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses]. ~~The driver license number may be changed no more than two (2) times in any four year period without prior approval of the Identity Verification Unit of the Department.~~

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

(a) **Purpose.** The purpose of this Section is to establish the procedures for a person under the age of eighteen (18) years to apply for and be issued a Class D driver license and whose parent has not filed an objection with the Department prohibiting the licensing of the person [47 O.S. § 6-103.1].

(b) **Exclusions.** This Section does not apply to motorcycles and other motor-driven cycles.

(c) **Learner Permit.** A person at least 15 1/2 but less than 16, who is currently receiving instruction in or has successfully completed a driver education course, or a person at least 16, with or without driver education, may make application to the Department for a Learner Permit. The Department will issue a Learner Permit under this subsection if the Department approves the application and if the person successfully passes all required examinations and is otherwise eligible for the driver license [47 O.S. §§ 6-103, 6-105].

(1) **Application requirements.** The applicant shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues a learner permit to the person.

(A) The applicant shall provide proof of identity and other required documentation [see ~~(2)~~(B)], submit all application information, sign the application, and successfully pass the vision and written tests. The applicant shall have his or her driver license application signed by a parent or guardian, or by a responsible adult if there is no parent or guardian [47 O.S. § 6-107(A)].

(B) Documentation shall be submitted proving:

(i) compliance with the school attendance requirements prescribed in 47 O.S. § 6-107.3,

(ii) successful passage of the eighth grade reading test as prescribed in 47 O.S. § 6-107.3(A)(2) and 70 O.S. § 1210.515, and

(iii) for an applicant at least 15 1/2 years of age but less than 16 years of age, documentation of attendance or successful completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be submitted. If the applicant is 16 years of age or older and has successfully completed a driver education course, documentation may be submitted. Documentation of attendance shall be the green card issued to the person from the driver education instructor, a signed contract or an attendance card issued for the person by the commercial driver education school, or an affidavit from the Department of Public Safety and a receipt of purchase from a parent-taught driver education provider. Documentation of completion shall be the completed green card issued to the person from the driver education instructor, a completion certificate issued to the person by the commercial driver education school, or a completion certificate from a parent-taught driver education provider. Any applicant who has completed driver education at a public high school in a state other than Oklahoma shall be required to obtain a green card issued by the Oklahoma high school in which he or she is currently enrolled. Proof of driver education from an out-of-state commercial driver education program shall not be acceptable.

(2) **Driving restrictions.** The permittee is authorized to operate a Class D motor vehicle between the hours of

5:00 a.m. and 10:00 p.m. and only *while accompanied by a licensed driver who is at least twenty-one (21) years of age and who is actually occupying a seat beside the permittee* [47 O.S. § 6-105(C)(2)]; provided, the license of the accompanying driver shall be current and valid.

(3) **Other information.** During the period the permittee is issued and possesses a Learner permit, the custodial legal parent or legal guardian shall ensure that the permittee *has received a minimum of fifty (50) hours of actual behind-the-wheel training, of which at least (10) hours of such training was at night, from a licensed driver who was at least twenty-one (21) years of age and who was properly licensed to operate a Class D motor vehicle for a minimum of two (2) years* [47 O.S. §6-105(D)(1)(c)]; provided, the license of the driver providing behind-the-wheel training shall be current and valid.

(d) **Intermediate License.** When a permittee *has applied for, been issued, and has possessed a Learner Permit for a minimum of six (6) months* [47 O.S. § 6-105(D)(1)(a)], the permittee may apply to the Department for an Intermediate License.

(1) **Application requirements.** The permittee shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues an Intermediate License to the permittee.

(A) The permittee shall provide proof of identity and successfully pass the driving skills tests,

(B) The person must not have been, within the previous 6 months, convicted of, pled guilty to, or pled no contest to any moving vehicle violation [47 O.S. § 6-105(D)(1)(b)],

(C) the permittee's parent or legal guardian shall certify *to the Department by sworn affidavit that the* permittee *has received a minimum of fifty (50) hours of actual behind-the-wheel training, of which at least (10) hours of such training was at night, from a licensed driver who was at least twenty-one (21) years of age and who was properly licensed to operate a Class D motor vehicle for a minimum of two (2) years* [47 O.S. §6-105(D)(1)(c)]; provided, the license of the driver providing behind-the-wheel training shall be current and valid, and

(D) for a person who was issued a learner permit and who was less than 16 years of age at the time of issuance pursuant to (c)(1)(B)(iii), documentation of successful completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be submitted. Documentation of completion shall be the completed green card issued to the person from the driver education instructor or a completion certificate issued to the person by the commercial driver education school. If such documentation is not presented, the person shall not be eligible for issuance of an intermediate license until the person is at least 16 1/2 years of age.

(2) **Driving restrictions.** The intermediate licensee shall be:

(A) restricted to driving:

(i) *only between the hours of 5:00 a.m. and 10:00 p.m., except for driving to and from work, school, school activities, and church activities, or*

(ii) *at any time, if a licensed driver who is at least twenty-one (21) years of age is actually occupying a seat beside the intermediate Class D licensee*; provided the license of the accompanying driver shall be current and valid, *and*

(B) *shall not operate a motor vehicle with more than one passenger unless:*

(i) *all passengers live in the same household as the custodial legal parent or legal guardian, or*

(ii) *a licensed driver at least twenty-one (21) years of age is actually occupying a seat beside the intermediate Class D licensee*; provided the license of the accompanying driver shall be current and valid. [47 O.S. § 6-105(D)(2)].

(e) **Class D driver license.** An intermediate licensee may apply to the Department for a Class D driver license if the licensee has applied for, been issued and possessed an Intermediate License for a minimum of:

(1) *one (1) year, or*

(2) *six (6) months, if the person has completed both the driver education and the parent-certified behind-the-wheel training provisions of subparagraph c of paragraph 1 of subsection D of this section* [47 O.S. § 61-05(E)(1)].

(A) **Application requirements.** The licensee shall meet the following requirements before the Department grants driving privileges to operate a Class D motor vehicle and issues a Class D driver license to the licensee.

(i) The licensee shall provide proof of identity and successfully pass the driving skills tests;

(ii) The licensee must not have been convicted of, pled guilty to, or pled no contest to any moving vehicle violation [47 O.S. § 6-105(D)(1)(b)]; and

(iii) for a person who has completed both driver education and the parent-certified behind-the-wheel training, documentation shall be submitted. Documentation of completion of a driver education course as defined in 47 O.S. § 6-105(C)(1) shall be the completed green card issued to the person from the driver education instructor or a completion certificate issued to the person by the commercial driver education school. Documentation of completion of parent-certified behind-the-wheel training shall be by affidavit signed by the parent and approved by the Department of Public Safety.

(B) **Driving restrictions.** The Department may restrict the driving privileges of any person as provided by law [47 O.S. § 6-113].

(f) **Persons licensed by another jurisdiction.** A person who, at the time of application, is licensed by another jurisdiction may apply for driving privileges under this Section. As used in this subsection, "another jurisdiction" means one of

the fifty (50) states, the District of Columbia, or a Canadian province.

(1) **Learner Permit.** If the person is operating under a learner permit, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit; or

(B) An Intermediate License, as provided in subsection (d), if driving privileges granted by another jurisdiction have been in effect for a minimum of six (6) months; provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License.

(2) **Intermediate License.** If the person is operating under an intermediate license, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit;

(B) An Intermediate License, as provided in subsection (d); provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License; or

(C) A Class D Driver License, as provided in subsection (e), if driving privileges granted by another jurisdiction have been in effect for a minimum of twelve (12) months; provided, a person who is less than sixteen and one half (16 1/2) years of age shall not be issued a Class D Driver License; or

(3) **Class D Driver License.** If the person is operating under a Class D Driver License, or equivalent, issued by another jurisdiction, the person may apply for:

(A) A Learner Permit, as provided in subsection (c); provided, a person who is less than fifteen and one half (15 1/2) years of age shall not be issued a Learner Permit;

(B) An Intermediate License, as provided in subsection (d); provided, a person who is less than sixteen (16) years of age shall not be issued an Intermediate License; or

(C) A Class D Driver License, as provided in subsection (e), if driving privileges granted by another jurisdiction have been in effect for a minimum of twelve (12) months; provided, a person who is less than sixteen and one half (16 1/2) years of age shall not be issued a Class D Driver License.

(4) **Considerations.**

(A) Credit shall be given for the time driving privileges have been granted and in effect, as evidenced by another jurisdiction. Evidence of driving privileges shall be confirmed by the issuance date on the permit or license from another jurisdiction, by the issuance date provided by the other jurisdiction, or both; provided, the earliest date shall be the date used to calculate credit.

(B) Examinations may be waived as provided in OAC 595:10-3-9(h).

595:10-1-8. Applicability, substitutions, limitations, and additions to federal rules adopted by reference [REVOKED]

~~(a) **Applicability.** The licensing regulations found in 49 C.F.R., Parts 383 and 391, as adopted in OAC 595:10-1-5 are applicable to all applicants for Class A, B, and C commercial driver licenses.~~

~~(b) **Terminology substitutions.** Unless otherwise specified, the following terminology shall apply to federal rules adopted by referenced in OAC 595:10-1-5:~~

~~(1) "Department of Public Safety" shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.~~

~~(2) "Commissioner of Public Safety" shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.~~

~~(3) "Driver License Examining Division" shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.~~

~~(c) **Limitations to scope of definitions.** The definitions provided in (a) of this Section are limited in application to 47 O.S. § 6-101 et seq. and the rules adopted by the Department to carry out those statutes. These definitions do not alter, replace, or change any definitions contained in Title 47 of the Oklahoma Statutes.~~

~~(d) **Additional qualification of drivers.** The following additions are made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older:~~

~~(1) A driver in solely intrastate commerce must be at least eighteen (18) years of age; and~~

~~(2) Any person who is not at least twenty one (21) years old shall not be licensed for:~~

~~(A) the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or~~

~~(B) transporting fifteen (15) or more passengers, except school bus drivers as provided in OAC 210:30-5.~~

595:10-1-9. Waiver of certain physical conditions for Class A, B, or C commercial driver license applicants [REVOKED]

~~(a) **For interstate commerce.** An applicant who does not meet the physical requirements of 47 C.F.R., § 391.41, and who desires to be considered for an interstate commercial driver license, must apply for a waiver under the alternative physical qualification standards under 49 C.F.R., Section 391.49, by contacting the Federal Motor Carrier Safety Administration, Oklahoma Division Office, 300 N. Meridian, Suite 106 South, Oklahoma City, OK 73107, 405-605-6047.~~

~~(b) **For intrastate commerce.**~~

~~(1) **Applicability to certain applicants.** This subsection applies to an applicant who does not meet the requirements of 49 C.F.R., § 391.41, who will be operating solely in intrastate commerce and who:~~

~~(A) has been continuously operating as a commercial driver with the proper type of license prior to and since June 12, 1989, or~~

~~(B) is exempt from meeting the medical requirements as prescribed in 49 CFR §390.3(f).~~

~~(2) **Applicability to certain physical conditions.** This subsection shall apply to the following physical conditions:~~

~~(A) Metabolic diseases (see OAC 595:10-5-5)~~

~~(B) Cardiovascular diseases (see OAC 595:10-5-6)~~

~~(C) Musculoskeletal problems (see OAC 595:10-5-8)~~

~~(D) Neurological disorders (see OAC 595:10-5-9)~~

~~(3) **Application process.** Application for an intrastate waiver must be made jointly by the driver and the motor carrier employer. Applications for such a waiver are available through the Medical Desk, Department of Public, P.O. Box 11415, Oklahoma City, OK 73136-0415, 405-425-2083.~~

~~(4) **Determination by the Department.** The Medical Desk of the Department will make the final determination as to whether the applicant may be further considered by the Department for an intrastate Class A, B, or C commercial driver license.~~

~~(A) If the Medical Desk authorizes the applicant for further consideration, the Desk will issue an authority letter to the applicant which will include any recommendations to the Driver License Examining Division as to driving limitations deemed necessary for the condition of the applicant.~~

~~(B) If the Medical Desk does not authorize the applicant for further consideration, the Desk will issue a letter to the applicant stating that authority is being denied. The applicant may appeal the denial pursuant to OAC 595:10-5-18.~~

~~(5) **Limitation of waiver.** If such a waiver is granted by the Medical Desk, the waiver is only effective in intrastate commerce, subject to the restrictions imposed pursuant to (c) of this Section..~~

~~(c) **Restrictions.** The Department of Public Safety may impose restrictions on those applicants under (b) of this section to whom the Department issues an intrastate waiver restricting the operation of a commercial motor vehicle to specified area, time of day, streets and highways, speed limits and any other restriction deemed necessary by the Department for the safe operation of a commercial motor vehicle. An extended skills test may be conducted to determine the appropriate restriction. Such restrictions shall apply upon the applicant becoming licensed by the Department to operate a motor vehicle.~~

PART 3. DRIVER LICENSE RENEWAL

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

(a) **General requirements.** During the month of expiration or as provided in (d) of this Section, each licensee shall present proper identification and pay the required fee to a Motor License Agent or to the Driver License Examining Division of the Department of Public Safety for renewal of the driver license of the licensee. Failure to renew a driver license by the end of the month of expiration shall not relieve the person of the obligation to renew his or her driver license under the provisions required by law and this Section if the person wishes to keep his or her driver license in force.

(b) **Required identification.**

(1) **Renewal with valid and unexpired driver license.** The valid and unexpired Class D driver license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. ~~The valid and unexpired Class A, B, or C commercial licensee shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License Examining Division of the Department.~~ The person shall provide secondary identification as prescribed in OAC 595:10-1-3(b)(4).

(2) **Renewal with an expired driver license.** The expired Class D driver license provided as the primary identification may be retained by the licensee, after the motor license agent has first punched a hole through the identification number of the license. ~~The expired Class A, B, or C commercial licensee shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License Examining Division of the Department.~~ The person shall provide primary identification as prescribed in OAC 595:10-1-3(b)(2) or (3), as appropriate.

(3) **Renewal without driver license.** Any person who does not have the valid and unexpired or expired driver license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Vision examination.** Persons holding a commercial driver license shall, upon renewal, meet the vision standards established in OAC 595:10-5-7 and 49 C.F.R., §391.41.

(d) **Limitations to issuance of a renewal driver license.**

(1) A renewal driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Section.

(2) Any applicant who requests a renewal of his or her driver license when the license has been expired in excess of three (3) years is required to appear before a Driver License Examiner, pursuant to OAC 595:10-1-2.

(e) **Early renewal of a driver license.** Any licensee may renew his or her driver license no more than one (1) year prior to the expiration date. A renewal which occurs more than one (1) year prior to the expiration date shall be treated as a replacement under the provisions of OAC 595:10-1-18.

(f) **Change of driver license number.**

(1) Use of the licensee's Social Security number as the driver license number is prohibited. At the time of renewal, any licensee whose driver license number is his or her social security number shall inform the Department or the motor license agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement license [see OAC 595:10-1-18 regarding replacement driver licenses]. ~~The driver license number may be changed no more than two (2) times in any four year period without prior approval of the Identity Verification Unit of the Department.~~

(g) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma Class D driver license which has been surrendered to another state in exchange for the other state's license, may apply directly to a motor license agent for ~~renewal~~ reactivation of the previous Oklahoma Class D license, upon establishing Oklahoma residence and following the applicable procedure for renewal. The agent shall call the Driver License Services Division and request clearance to issue the license. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license. If the out of state license has been lost or destroyed, the person shall provide to the motor license agent a notarized affidavit of that fact. In no case shall the out of state driver license be retained by the person when an Oklahoma license has been issued to the person. The agent shall retain the license and submit it to the Department with the agent's report. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld.

(h) **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to renew his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The driver license shall be surrendered by the individual to the Department prior to issuance of the identification card. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

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

(a) Any Oklahoma licensee who is temporarily residing out of the state may request the Department of Public Safety to renew his or her license by mail. The Oklahoma licensee shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned; therefore, original documents should not be sent), his or her driver license number, his or her signature, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a driver license renewal along with his or her out-of-state address to Department of Public Safety, Driver License Examining Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(b) If the Department approves the renewal by mail, the Department shall create the renewal license using the most recent digital photograph and digital signature of the licensee available from the files of the Department.

(c) The Department shall mail the renewal license to the out-of-state address provided by the licensee.

(d) If the Department denies the renewal by mail, the Department shall notify the licensee in writing of the denial and the reason for the denial.

PART 5. DRIVER LICENSE REPLACEMENT

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

(a) **General requirements.** Any person requiring a replacement driver license because the license was lost, stolen, or mutilated or because information on the license needs to be changed may request a motor license agent to issue a replacement, upon presentation of proper identification and payment of the required fee.

(b) **Required identification to replace lost, stolen, or mutilated license.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Required identification to change information and replace a license.**

(1) **Name change.** Any person who requests a replacement driver license in order to make a name change shall comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the name change may retain the old license, if it is available and is a Class D driver license, after the motor license agent has first punched a hole through the identification number of the license. ~~If the license is available and is a Class A, B, or C commercial licensee, it shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License Examining Division of the Department.~~

(2) **Address change.** Any person who requests a replacement driver license in order to make an address

change shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the address change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license. An address change shall be made only to an Oklahoma address.

(3) **Endorsement or restriction change.** Any person who requests a replacement driver license in order to change endorsement or restriction information on the license shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the information change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license.

(4) **Sex change.** The licensee shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The licensee shall also show proof of former legal name. The former name shall be entered into the "Alias" field in the driver license database to provide historical information to the Department. The person requesting the information change may retain the old license, if it is available, after the motor license agent has first punched a hole through the identification number of the license.

(d) **Limitations to issuance of a replacement driver license.**

~~(1)~~ A replacement driver license will be issued only to an individual whose driving privilege is not under suspension, revocation, disqualification, cancellation, or denial and who complies with this Section.

~~(2) The driver license number may be changed no more than two (2) times in any four year period without prior approval of the Identity Verification Unit of the Department.~~

(e) **Change of driver license number.**

(1) Use of the licensee's Social Security number as the driver license number is prohibited. At the time of replacement, any licensee whose driver license number is his or her social security number shall inform the Department or the motor license agent of that fact. If the numbers are the same, a new driver license number will be assigned for the licensee by computer [47 O.S. § 6-106(B)].

(2) Any licensee may request to change his or her driver license number to any nine-digit number by making a written request to the Department. Upon approval by the Department, the licensee shall obtain a replacement driver license from a motor license agent, and the licensee shall pay the required fee for the replacement. ~~The driver license number may be changed no more than two (2) times in any four year period without prior approval of the Identity Verification Unit of the Department.~~

(f) ~~**Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma Class D driver license which has been surrendered to another state in exchange for the other state's license may apply directly to a motor license agent for replacement of the previous Oklahoma license, upon establishing Oklahoma residence and following the applicable procedure for replacement. The agent shall call the Driver License Examining Division and request clearance to issue the license. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license. If the out of state license has been lost or destroyed, the person shall provide to the motor license agent a notarized affidavit of that fact. In no case shall the out of state driver license be retained by the person when an Oklahoma license has been issued to the person. The agent shall retain the license and submit it to the Department with the agent's report. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld.~~

~~(g)~~ **Persons unable to appear due to medical situation.** An individual, who is an Oklahoma resident and who is located within the state, may declare in writing to the Department that, because of a medical reason or condition, he or she is unable to appear in person to replace his or her driver license, in which case the Department shall issue by mail an identification card to the person and shall not issue a driver license. The driver license shall be surrendered, if available, by the individual to the Department prior to issuance of the identification card. The individual shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

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

(a) Any Oklahoma licensee who is temporarily residing out of the state may request the Department of Public Safety to replace his or her license by mail. The Oklahoma licensee shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned, therefore, original documents should not be sent), his or her driver license number, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the license (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a driver license replacement along with his or her out-of-state address to Department of Public Safety, Driver License Examining Division, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415.

(b) If the Department approves the replacement by mail, the Department shall create the replacement license using the most recent digital photograph and digital signature of the licensee available from the files of the Department.

(c) The Department shall mail the replacement license to the out-of-state address provided by the licensee.

(d) If the Department denies the replacement by mail, the Department shall notify the licensee in writing of the denial and the reason for the denial.

PART 7. IDENTIFICATION CARDS

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

(a) **General requirements.** Any person requiring a replacement identification card because the card was lost, stolen, or mutilated or because information on the card needs to be changed may request a motor license agent or the Department to issue a replacement, upon presentation of proper identification and payment of the required fee.

(b) **Required identification to replace lost, stolen, or mutilated identification card.** Any person shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Required identification to change information and replace an identification card.**

(1) **Name change.** Any person who requests a replacement identification card in order to make a name change must comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b) in order to identify the person by his or her former name and with OAC 595:10-1-35 in order to identify the person by his or her new name. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the name change may retain the old card, if it is available, after the motor license agent has first punched a hole through the identification number of the card.

(2) **Address change.** Any person who requests a replacement identification card in order to make an address change shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). The person requesting the address change may retain the old card, if it is available, after the motor license agent has first punched a hole through the identification number of the card. An address change shall be made only to an Oklahoma address.

(3) **Sex change.** The cardholder shall show an original or certified court order for name change, if applicable, and a notarized statement on letterhead from the physician who performed the sex change operation indicating the applicant or licensee has undergone a complete physical sex change. The letter shall state the sex change is "irreversible and permanent". The cardholder shall also show proof of former legal name. The former name shall be entered into the "Alias" field in the identification card database to provide historical information to the Department. The person requesting the information change may retain the old card, if it is available, after the motor license agent has first punched a hole through the identification number of the card.

(d) **Change of identification card number.** Use of the cardholder's Social Security number as the identification card number is prohibited.

(e) **Persons who may appear before a motor license agent.** An individual who has previously held an Oklahoma identification card may apply directly to a motor license agent for replacement of the previous Oklahoma identification card, upon establishing Oklahoma residence and following the applicable procedure for replacement.

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

(a) Any Oklahoma identification card holder who is temporarily residing out of the state may request the Department of Public Safety to renew or replace his or her identification card by mail. The Oklahoma card holder shall mail copies of documentary evidence of his or her name and date of birth as required by OAC 595:10-1-10 (documents sent for verification will not be returned., therefore, original documents should not be sent), his or her identification card number, his or her signature, both Oklahoma residence address and Oklahoma mailing address with the specification as to which address is to be displayed on the card (display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this subsection shall not be construed to prohibit display of a residence address if it is also the mailing address), and the required fee for a identification card renewal or replacement along with his or her out-of-state address to:

(1) Department of Public Safety, Driver License Services, P. O. Box 11415, Oklahoma City, Oklahoma 73136-0415; or

(2) any motor license agent.

(b) If the Department approves the renewal or replacement by mail and the digital photograph and digital signature of the card holder are available from the files of the Department, the Department shall create the renewal or replacement identification card using that photo and signature.

(c) The Department shall mail the renewal or replacement identification card to the out-of-state address provided by the card holder.

(d) If the Department denies the renewal or replacement by mail, the Department shall notify the card holder in writing of the denial and the reason for the denial.

PART 9. CHANGE OF NAME ON A DRIVER LICENSE OR IDENTIFICATION CARD

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

(a) **Procedure.** Any person may request a change of name on a driver license or identification card upon providing the appropriate identification and paying the required fee to a Motor License Agent or to the Department of Public Safety.

(b) **Name changes allowed.** Name changes must result from either marriage or court action. A person requesting a legitimate name change shall submit, without exception, the ~~original~~ certified document which indicates the name change.

(c) **Documentation required.** A person requesting a name change shall comply with the primary and secondary identification requirements in OAC 595:10-1-3(b) in order to identify the person by his or her former name and OAC 595:10-1-18 in order to identify the person by his or her new name. The required documents for a name change shall include:

(1) Court-ordered name change, which shall be in addition to the primary and secondary forms of identification required by OAC 595:10-1-3(b). Only the following types of court orders may be considered when a name change is requested:

(A) divorce decree,

(B) adoption decree,

(C) name change decree, or

(D) establishment of record of birth, pursuant to 63 O.S., Section 1-315,

(2) Marriage certificate, which may serve only as the secondary form of identification required by OAC 595:10-1-3(b). ~~The~~For a marriage certificate issued in Oklahoma, the name change shall be to the name signed by the person on the marriage certificate, or

(3) For a common law marriage, "Affidavit of Common Law Marriage" containing the notarized signatures of the husband and wife. Both primary and secondary forms of identification as prescribed in OAC 595:10-1-3(b) must be submitted in addition to this affidavit.

(d) **Form of new name.**

~~(1)~~ A name change resulting from marriage, court order or divorce shall appear on the driver license or identification card ~~in one of the following forms:~~

~~(A) [Surname of spouse], [first name] [middle name or initial],~~

~~(B) [Surname of spouse], [first name] [former surname or initial],~~

~~(C) [Surname surname of spouse], [first name] [middle name or initial], or~~

~~(D) [Surname of spouse surname], [first name] [middle name or initial].~~

~~(2) A name change resulting from a court order or divorce decree must appear on the driver license or identification card~~ exactly as stated on the marriage certificate, court order or divorce decree.

(e) **Titles or ecclesiastical names.** Titles or ecclesiastical names will not be placed on a driver license or an identification card.

(f) **Retention of information.** The former name shall be entered into the "Alias" field in the driver license or identification card database to provide historical information to the Department.

PART 13. MOTOR LICENSE AGENTS

595:10-1-50. Identification required

(a) **General requirements.** Anyone applying for a renewal or replacement driver license or identification card must furnish documentary proof of identity, name, and birth date [47 O.S. §§ 6-114 and 6-115].

(b) **Required identification to renew driver licenses and identification cards.**

(1) **Renewal with expiring or expired driver license or identification card.** The expiring or expired driver license or identification card shall be surrendered as the primary identification. The person must provide secondary identification as prescribed in OAC 595:10-1-3(b)(2).

(2) **Renewal without driver license or identification card.** Any person who does not have the expiring or expired driver license or identification card shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(c) **Required identification to replace lost, stolen, or mutilated driver licenses and identification cards.** Any person, shall provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(d) **Required identification to change information and replace driver licenses and identification cards.**

(1) **Name change.** Any person who requests a replacement driver license or identification card in order to make a name change must comply with the primary and secondary identification requirements prescribed in OAC 595:10-1-3(b), and with OAC 595:10-1-35. The person requesting the name change may retain the old license or card as provided in OAC 595:10-1-57 (e). The motor license agents shall be authorized to change the last name only.

(2) **Address change.** Any person who requests a replacement driver license or identification card in order to make an address change must provide both primary and secondary identification as prescribed in OAC 595:10-1-3(b). Both the Oklahoma mailing address and ~~resident~~the Oklahoma residence address shall be collected by the motor license agent, and the licensee or card holder shall choose which address to be displayed on the license or card. The person requesting the address change may retain the old license or card as provided in OAC 595:10-1-57 (e). An address change shall be made only to an Oklahoma address.

(3) **Endorsement or restriction change.** Any person who requests a replacement driver license in order to change endorsement or restriction information on the license shall provide a DL-10 form issued by the Department, except for the removal of Restriction G. The person requesting the information change may retain the old license as provided in OAC 595:10-1-57 (e).

(4) **Emergency contact information.** An emergency contact name, address and phone number may be included on the application, which emergency contact may be changed or removed at any time by the licensee or by the emergency contact. The emergency contact information shall be for use by the Department and law enforcement officers only.

(e) **Permissible documents.** Any document accepted shall be either the original or a certified copy of the primary and secondary identification as prescribed in OAC 595:10-1-3(b).

(f) **Unacceptable documents.** Any document which has been or appears to have been duplicated, traced over, mutilated,

defaced, tampered with or altered in any manner or that can not be read shall not be accepted or used for identification purposes.

595:10-1-51. Operational procedures

(a) The driver license computer, camera, printer, and other hardware, software, and supplies (which may be referred to as driver license equipment) used in the production of driver licenses and identification cards shall be used solely for the issuance of Oklahoma driver licenses or identification cards. Driver licenses shall be issued if the agency is open for business. If the agency is unable to issue licenses, the agent shall notify the Department why the agency is not issuing licenses.

(b) At the close of business each day, the agent shall remove the top "clam shell" and lock it in a safe place and shall also destroy all used color print ribbon.

(c)

(1) Only persons who have been issued a personal access code by the Department of Public Safety shall be authorized to operate driver license equipment and issue or make changes to driver licenses or identification cards.

(2) Agents shall not submit applications for personal access codes for employees who are not at least eighteen (18) years of age. Personal access codes shall not be assigned to anyone under the age of eighteen (18) or to any employee whose driver license is suspended, revoked, cancelled or denied. On and after the Commissioner's approval of this rule, each application for a personal access code shall be submitted by an agent to the Department, and the Department shall give temporary approval to the applicant to issue driver licenses and identification cards, pending an investigation of the applicant's complete national and state criminal records which must be completed within 90 days of the temporary approval. All completed documents necessary for the state background check shall be submitted by the agent to the Oklahoma State Bureau of Investigation and results of the investigation shall be forwarded to the Department indicating compliance with this requirement. The Department shall cancel the access code to issue driver licenses or identification cards upon determination the person's state criminal history does not warrant certification, based upon the presence in the history of a high misdemeanor conviction within the ten (10) years immediately preceding the application and of any felony conviction. If no record is found within state criminal records, the temporarily approved applicant shall submit to a national criminal history records search, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes. The Department shall cancel the access code to issue driver license or identification cards upon determination the person's national criminal history does not warrant certification, based upon the presence in the history of a high misdemeanor conviction with the ten (10) years immediately preceding the application and of any felony conviction. If no record is found within national criminal records, the applicant shall be given regular approval to issue driver licenses and identification cards. Persona access codes shall be kept confidential by the employee and agent. Personal access codes shall be used only by the person to whom the code has been assigned. New employees whose duties are intended to include the issuance of driver licenses and identification cards shall first apply for a personal access code from the Department of Public Safety as provided for in this subsection; provided, an employee shall not be authorized operate driver license equipment and to issue driver licenses and identifications cards unless approved by the Department and a personal access code has been issued to the employee by the Department. A criminal history investigation shall be required if an employee has any break in service and the result of the previous state criminal history investigation on file with the Department for the employee is more than one (1) year old, if the employee changes agents and it has been more than one (1) year since the last background was done, or if a criminal history investigation was not previously required of the employee. The Department may, at its discretion , require a current criminal history investigation of any individual operating the driver license equipment.

(3) The agent shall be responsible for training new employees. The Department may offer periodic training programs as needed.

(4) The agent shall be responsible for the conduct of the employee.

(d) Any substitution of equipment or alteration in the making of a driver license or identification card is prohibited by law, and may be subject to criminal prosecution. Licenses or cards shall be made in accordance with specifications as determined by the Department. If they do not meet these specifications, the agent or the employee shall not issue the license or card.

(e) Reports shall be forwarded to the Driver License Services Division in accordance with the rules of the Oklahoma Tax Commission or as prescribed by law.

(f) If the agency relocates, the agent shall immediately notify the Department of Public Safety in writing of the new address and telephone number. The Department will contact the agent and schedule a time to set up the agency at the new location and provide any training necessary to the agency.

(g) In the event of loss, theft, or misuse of any of the equipment, supplies, or documents, or any violation of state law, Department rule, or other improper conduct related to the issuance of driver license or identification cards, the Department of Public Safety, Driver License Examining Division, shall be notified immediately by telephone at (405) 425-7745. In case of loss or theft the agent shall take an immediate inventory of all driver license documents on hand and list all missing items and equipment by number, when applicable. A copy of missing inventory, police investigation, and/or incident report shall be immediately forwarded to the Department of Public Safety, Driver License Examining Division. In cases of misuse, the agent must immediately contact the Driver License Examining Division, Identity Verification Unit of the Department of Public Safety by telephone at (405) 425-2477. If the agent is unable to contact this unit, then the Driver License Examining Division shall be notified by telephone at the number listed above.

(h) Agents are prohibited from accepting an altered driver license application (DL-10 form) or any other altered or unapproved document for the issuance of an Oklahoma driver license or identification card.

(i) When an agency closes, any equipment, supplies, and documents issued to the agent by the Department of Public Safety must be accounted for and returned to the Department of Public Safety.

(j) Each employee is to be made aware by the agent of the penalties for misuse of driver license documents or identification cards and any production of fraudulent and erroneous driver licenses or identification cards.

(k) When it comes to the attention of the Department of Public Safety that any agent or an employee of an agency is in violation of any statute or rule or has committed any fraudulent act regarding the issuance of driver licenses or identification cards, after consultation with the Commissioner's office, the Director of the Driver License Examining Division may notify the motor license agent~~,~~and the Tax Commissioner~~, and the appointing senator~~ that the access code number(s) may be canceled or suspended and/or the camera may be removed. In accordance with the Administrative Procedures Act, a hearing before the Commissioner or the Commissioner's designee will be offered, provided the Director of the Driver License Services Division is notified in writing within fifteen (15) days of receipt of notification. The issue at the hearing will be whether or not a violation occurred and the severity of the sanction which should be imposed.

(l) The following changes or activities are not authorized at an agency without other authority:

(1) Driver license number or identification card number, except when changing to a computer generated number,

(2) Sex,

(3) Eye color,

(4) Race,

(5) Date of birth,

(6) Class of license,

(7) Endorsement,

(8) Extension of expiration on driver license or identification card,

(9) Temporary receipt or authorization to drive for lost license while application is in process,

(10) Taking photographs for other identification cards (for example: police, fire, sheriff, passport, etc.),

(11) Adding titles to names, such as Sheriff, Police Officer, Judge, Senator, Representative, Dr., Rev., Fireman, etc.,

(12) Adding addresses or information to indicate professional status on the face of the driver license or identification card such as JOHN DOE, OKLAHOMA HIGHWAY PATROL or ROBERT DOE, M.D. All addresses ~~must~~shall be the legal Oklahoma residence address or Oklahoma mailing address [47 O.S. § 6-106]. ~~Any combination~~ Display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this paragraph shall not be construed to prohibit display of a residence address if it is also the mailing address,

(13) Placing anything on a driver license or identification card, such as stickers of civic clubs, medical symbols, etc., except those approved by the Department of Public Safety,

(14) Producing more than one (1) driver license or identification card for the applicant at the time of application,

(15) Adding service charges to an application fee for any reason other than actual cost for telephone calls made for the applicant to obtain approval to issue the driver license or identification card, or

(16) Providing information from the driver license or identification card application to private businesses, government agencies, or persons other than the Department of Public Safety, unless authorized by the Department.

(m) No documents shall be removed from the office of the motor license agent by anyone unless authorized by the Driver License Examining Division. If a situation arises which warrants removal of documents, the motor license agent shall telephone the Division to explain the circumstances and obtain authority.

(n) During the issuance process for an original, renewal or replacement driver license or identification card, the motor license agency shall ask the applicant if he or she would like to donate One Dollar ($1.00) to the Oklahoma Organ Donor Education and Awareness Program [63 O.S., § 2220.5]. If the applicant consents to the donation, the agency shall enter a "Y" in the appropriate field on the computer which shall add the One-Dollar donation to the amount collected with the cost of the license or card. Each One-Dollar donation shall be recorded and shall be reflected on the semi-monthly reports of the motor license agency. The applicant shall be given the option to become or to decline becoming an organ donor by marking the "Yes" or "No" box, as appropriate, on the signature pad. A mark of "Yes" shall cause an organ donor symbol to be placed on the driver license or identification card. If the holder of a driver license or identification card wishes to remove the organ donor symbol from the license or card, the applicant shall make the request of the motor license agency and shall be asked to mark the "No" box on the signature pad. A license or card shall be issued without the organ donor symbol and the appropriate fee collected by the motor license agency. The holder of a Class A, B, or C commercial driver license shall be required to appear before a Driver License Examiner to remove or add the organ donor symbol.

(o) Rules in this Chapter regarding motor license agents are specific and limiting. Whenever an action either is not included or is not prohibited, it shall not be construed to convey authority to perform that action within the duties, responsibilities, or authority of the motor license agents.

595:10-1-56. Renewal of driver license or identification cards

(a) **Normal renewal procedure.** If an applicant presents proper identification [see OAC 595:10-1-51 regarding identification documents required], the agent may accept the required remittance for the class of driver license or the identification card being issued, make any changes necessary that have been authorized and issue the driver license or identification card.

If the licensee presents an Oklahoma driver license or the card holder presents an Oklahoma identification card as a form of identification, the agent shall;

(1) for a Class D licensee or identification card holder, return the expired license or card, if requested by the licensee or holder and after first punching a hole through the identification number on the license or card, or if the licensee or holder does not wish to retain the expired license or card, return it with the agent's regular reports to the Driver License Examining Division of the Department, or

(2) for a Class A, B, or C commercial licensee, the license shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License Examining Division of the Department.

(b) **Early renewal.** An individual may make application for the renewal of his or her license or card not more than one (1) year prior to the expiration date of the license or card. If the application for renewal occurs more than one (1) year prior to the expiration date, the agent shall notify the individual that the transaction must be treated as a replacement under the provisions of OAC 595:10-1-57. The agent shall;

(1) for a Class D licensee or identification card holder, return the expired license or card, if requested by the licensee or holder and after first punching a hole through the identification number on the license or card, or if the licensee or holder does not wish to retain the expired license or card, return it with the agent's regular reports to the Driver License Examining Division of the Department, or

(2) for a Class A, B, or C commercial licensee, the license shall be surrendered by the licensee to the motor license agent, and the agent shall retain the license and return it with the agent's regular reports to the Driver License Examining Division of the Department.

(c) **Late renewal.** An individual who makes application for renewal but whose license or card has been expired in excess of three (3) years shall be referred by the agent to a Driver License Examiner.

(d) **Renewal of expired license.** The holder of an Oklahoma driver license or identification card which has expired more than 30 days shall be required to show proof of lawful presence in the United States to the motor license agency in order to renew the license or card. Any motor license agent who has been certified by the Department to identify state certified birth certificates may renew an expired license or card by entering the certificate information in the computer. If the agent has not been certified by the Department, the agent shall refer the applicant to a Driver License Examiner to show proof of lawful presence in the United States.

(e) **Persons temporarily out of state.** The holder of an unexpired Oklahoma driver license or identification card who is temporarily out of the state of Oklahoma and who wishes to renew or replace the license or card by mail shall be referred to the Driver License Examining Division of the Department of Public Safety or the Department of Public Safety website.

(f) **Previous Oklahoma licensees and card holders.** An individual who has previously held an Oklahoma Class D driver license which has been surrendered to another state in exchange for the other state's license or who has previously held an Oklahoma identification card which has expired, may apply directly to a motor license agent for ~~replacement or renewal~~ reactivation of the previous Oklahoma license or identification card, upon establishing Oklahoma residence and following the applicable procedures for ~~replacement or~~ renewal. Before attempting to issue a driver license under this subsection, the agent shall call the Driver License Examining Division and request clearance to issue the license. If clearance is not given, the person shall be informed to contact the state whose action is causing the clearance to be withheld. If the clearance is given by the Department, the person shall surrender the out of state license to the agent, and the agent shall issue the Oklahoma license or card. If the out of state license has been lost or destroyed, the person shall provide to the motor license agent a notarized affidavit of that fact. The agent shall retain the license or affidavit, as applicable, and submit it to the Department with the agent's report. This procedure applies to a Class D driver license or identification card only.

(g) **Commercial driver license renewal.** The holder of a Class A, B, or C commercial driver license shall appear before a Driver License Examiner for renewal.

PART 19. DRIVER LICENSE AND IDENTIFICATION CARD CONTENT

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

Each driver license will display the following information about the person to whom the license was issued [47 O.S. §6-111(A)]:

(1) color photo,

(2) full legal name in the order [last], [first] [middle]. No initial shall be used unless the initial is the legal name of the person. If any abbreviation is required due to the length of the name, only the Department of Public Safety shall have authority to determine the abbreviation used,

(3) Oklahoma residence address or Oklahoma mailing address. Display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this paragraph shall not be construed to prohibit display of a residence address if it is also the mailing address,

(4) signature,

(5) sex,

(6) date of birth,

(7) weight,

(8) height,

(9) color of eyes,

(10) driver license class,

(11) driver license number,

(12) driver license issue date,

(13) driver license expiration date,

(14) any driving restriction code(s) (if applicable),

(15) any driver license endorsement(s) (if applicable),

(16) date upon which the person reaches twenty-one (21) years of age and the words "UNDER 21" [47 O.S. §6-101.1(A)] (if applicable), ~~and~~

(17) organ donor indicator (if applicable), and

(18) hearing impaired indicator (if applicable).

595:10-1-92. Driving restriction codes

A restriction or restrictions may be placed upon a person's driving privilege as deemed necessary by the Department [47 O.S. §6-113]. The restriction(s) will appear as a code on the person's driver license. Following are the various driving restriction codes and their meanings:

(1) 1. Corrective lenses
(2) 2. Left outside rearview mirror
(3) 3. Restriction 1 or 2
(4) 4. Automatic transmission
(5) 5. Turn indicators, power steering, or steering knob
(6) 6. Food, fruit, or candy within reach of driver
(7) 7. Adequate artificial limbs
(8) 8. Detailed restriction - Inquire Oklahoma driver license file (This restriction code is used when other restrictions are not applicable. A narrative explaining the restriction will appear on the person's driver license file.)
(9) 9. Accompanied by licensed driver age 21 or older in front seat
(10) 0. Motorcycle only - if under age 16, restricted to 250 cc motorcycle or motor scooter between the hours of 4:30 a.m. and 9:00 p.m.
(11) A. Regardless of age, when operating a motorcycle must be in view of a person who is licensed ~~driver~~to operate a motorcycle or motor-driven cycle and who is at least 21 years old
(12) E. When operating a commercial motor vehicle, restricted to automatic transmission
(13) G. Inquire of Oklahoma driver license file until age 17 or older
(14) K. CDL intrastate only
(15) L. When operating a commercial motor vehicle, restricted to a vehicle without air brakes
(16) M. When operating a passenger bus, restricted to Class B or C commercial motor vehicle
(17) N. When operating a passenger bus, restricted to a Class ~~B~~C commercial motor vehicle
(18) O. Restricted from operating tractor trailer vehicles
(19) R. Ignition interlock device
(20) V. Medical variance
(21) Z. When operating a commercial motor vehicle with air brakes, restricted to air over hydraulic

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

Each identification card will display the following information about the person to whom the card was issued [47 O.S. §6-111(A)]:

(1) color photo,
(2) full legal name in the order [last], [first] [middle]. No initial shall be used unless the initial is the legal name of the person. If any abbreviation is required due to the length of the name, only the Department of Public Safety shall have authority to determine the abbreviation used,
(3) Oklahoma residence address or Oklahoma mailing address. Display of both the residence address and mailing address, or any combination thereof, is prohibited; provided, this paragraph shall not be construed to prohibit display of a residence address if it is also the mailing address,
(4) signature,
(5) sex,
(6) date of birth,
(7) weight,
(8) height,
(9) color of eyes,
(10) "ID" to indicate identification card,
(11) identification card number,
(12) identification card issue date,
(13) identification card expiration date,
(14) date upon which the person reaches twenty-one (21) years of age and the words "UNDER 21" [47 O.S. §6-101.1(A)] (if applicable), ~~and~~
(15) organ donor indicator (if applicable), and
(16) hearing impaired indicator (if applicable).

SUBCHAPTER 3. EXAMINATION

595:10-3-1. Purpose

This Subchapter establishes how to apply for a driver license examination, where to apply, how to study, the vision standards, vehicle requirements, knowledge tests, skills test and scoring criteria, and the skills test which is administered to severely handicapped persons.

595:10-3-4. Application for examination

(a) **Information from applicant.** The applicant must complete and submit an application for a driver license ~~at~~to the Driver License ~~Examination Station~~Examining Division prior to the commencement of the required examination. When determined by the Driver Examiner, from information received from the applicant, that the applicant may be afflicted with any physical or mental ailment as set out in 47 O.S. §6-119, the examination ~~will~~may be discontinued until the applicant has met all of the requirements set out in the Medical Aspects of Driver Licensing [see Subchapter 5 of the Chapter regarding medical aspects].

(b) **Required identification.** Each applicant ~~must~~shall furnish documentary proof to establish his or her identity, legal name and birth date as required in OAC 595:10-1-3(b).

(c) **Medical reports.** An applicant may be required to submit medical reports regarding any physical or mental condition which might affect driving ability as set forth in 47 O.S. § 6-119 and Department of Public Safety rules regarding the Medical Aspects of Driver Licensing [see Subchapter 5 of this Chapter regarding medical aspects].

(d) **License application void.** Approved Class D driver license applications and identification card applications shall be void after ~~ten (10)~~thirty (30) days from the date of approval ~~or no more than thirty (30) calendar days following initial application date, whichever occurs first~~. If the license or card

has not been obtained by the applicant within the allowed time, the applicant must appear before a Driver License Examiner and, after determination by the Examiner that all criteria and test scores are still valid, the Examiner may revalidate the application.

595:10-3-9. Skills examination

(a) **In general.** The skills examination shall only be administered after the applicant has successfully passed the knowledge test, or had it waived if eligible, and the vision test. Whenever a skills examination is required, the following general conditions shall apply:

(1) The skills examination shall start at a designated location and shall include an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle. Applicants shall furnish the type of vehicle required for the Class D skills examination.

(2) The skills examination shall not be administered in a vehicle:

(A) which is not insured as required by 47 O.S. §7-600 et seq.,

(B) which does not have a current license plate,

(C) which is not equipped with seatbelts, if the vehicle was originally manufactured and equipped with seatbelts, or

(D) which does not comply with vehicle equipment and safety standards as required by Chapters 12 and 13 of Title 47 of the Oklahoma Statutes.

(3) An applicant determined by an examiner to be cheating on any portion of the skills examination shall:

(A) immediately forfeit the examination,

(B) be given a failing score by the examiner, and

(C) be disqualified from retaking the examination for one week.

(b) **Scoring of examination.** The scoring procedure will be on a cumulative deduction system based on poor driving practices. The Commissioner or the Commissioner's representative shall determine a point value for each improper driving act.

(c) **Content of examination for Class D driver license.**

(1) The skills examination shall include, but not be limited to, the following maneuvers:

(A) Starting,

(B) Backing (excluding two-wheel and three-wheel vehicles),

(C) Hill parking (excluding two-wheel and three-wheel vehicles),

(D) Starting on hill (excluding two-wheel and three-wheel vehicles),

(E) Intersection movement and observance,

(F) Lane observance and changing,

(G) Left and right turns,

(H) Pedestrian and vehicle right-of-way,

(I) Proper use of automatic transmission or clutch gear (excluding two-wheel or three-wheel vehicles),

(J) Use of brake and accelerator, ~~and~~

(K) Traffic lights or signals, and

(L) Parallel Parking (excluding two-wheel and three-wheel vehicles).

(2) The skills examination will not be conducted when examination route roadways are considered by the examiner to be slick or hazardous due to inclement weather.

(3) Criteria for a skills examination are as follows:

(A) Starting: To determine if the individual is familiar with the vehicle's controls and proper use, and to determine the individual's skill and ability to move the vehicle from a parking space or parking lot into the traffic lane.

(B) Backing: To determine the individual's ability to control vehicle while backing for a distance of approximately fifty (50) feet.

(C) Hill parking (stopping and starting): To determine if the individual has the ability to park a vehicle on an incline in a safe manner and leave that position in a safe manner.

(D) Transmission (automatic or standard): To determine if the individual has the coordination and ability necessary for reasonable control of the vehicle.

(E) Brakes: To determine the individual's skill and physical ability in the proper usage of the brake(s).

(F) Control of speed: To determine the speed the individual maintains relative to speed limits and other traffic.

(G) Gap selection: To determine whether the individual exercises proper judgment when entering or leaving the roadway, when turning or crossing an intersection, or when changing lanes.

(H) Driver alertness: To determine whether the individual observes and is aware of situations and circumstances which play an important part in safe driving.

(I) Right-of-way: To determine the individual's knowledge of right-of-way and the ability to react properly, and to determine whether an individual shares the road properly with other drivers and pedestrians.

(J) Legal stop: To determine whether the individual observes, understands, and obeys stop signs and traffic signals.

(K) Traffic lights or signs: To determine whether the individual sees, understands, and obeys traffic lights and other signs.

(L) Signals: To determine whether the individual gives the proper signal when driving away from the curb, changing lanes, or turning.

(M) Lane usage: To determine whether the individual has the knowledge and ability to use lanes properly.

(N) Observation: To determine whether the individual observes those things which are necessary for safe driving.

(O) Final Park: To determine the individual's ability to park the vehicle at the conclusion of the skills examination in a manner compatible with safe driving practices and statutory requirements.

(P) Left turn items scored:

(i) Cuts corner on approach.

(ii) Cuts corner on lane entry.

(iii) Turns into the wrong lane (does not affect other traffic).

(iv) Turns from wrong lane (does not affect other traffic).

(v) Turns wheels while stopped, waiting to make turn.

(vi) Too wide on lane entry.

(vii) Fail to signal turn for at least 100 feet before turning.

(viii) Fail to approach turn in the proper lane.

(Q) Right turn items scored:

(i) Too wide on approach.

(ii) Too wide on lane entry.

(iii) Turns from wrong lane (does not affect other traffic).

(iv) Turns into wrong lane (does not affect other traffic).

(v) Bumps, scrapes, or climbs curb.

(vii) Fail to signal turn for at least 100 feet before turning.

(viii) Fail to approach turn in the proper lane.

(R) Passenger vehicles other than school buses or vehicles transporting passengers for hire are not required to stop at a railroad crossing.

(S) Parallel parking: To determine the proficiency an individual has attained in coordinating judgment, skill, and ability to park a vehicle and drive away from a designated area, and to maneuver the vehicle in close quarters.

(4) Disqualifications are as follows:

(A) **Seat belt not in use.** Applicant fails to use seat belt. The seat belt shall be properly adjusted and fastened before the vehicle enters a public roadway.

(B) **Moving traffic violation.** Applicant received a traffic citation for a moving violation during the skills examination.

(C) **Disobey sign or signal.** Applicant ignored or did not obey sign or signal.

(D) **Driver speeding.** Applicant's speed is more than five (5) miles per hour over the posted speed limit or the lawful speed limit for the vehicle being driven.

(E) **Fail to stop.** Applicant rolled through stops or failed to stop.

(F) **Traffic laws.** Applicant ignored or did not obey traffic laws.

(G) **Yield to others.** Applicant did not yield to other road users (pedestrians, vehicles, etc.) Applicant did not appropriately yield the right-of-way to pedestrians or other vehicles during driving maneuvers.

(H) **Left of center.** Applicant drives left of center (except when needed to perform a turn safely or to proceed safely on a direct course.

(I) **Avoidable crash or incident or dangerous act.**

(i) Applicant involved in an avoidable crash or collision.

(ii) Applicant's vehicle has physical contact with other vehicles, objects, pedestrians, etc.

(iii) Applicant commits any act or omission that creates a dangerous or unsafe traffic environment (near accidents, etc.).

(iv) Applicant's actions causes drivers of other vehicles or pedestrians to take evasive actions.

(v) Applicant's actions force examiner to take verbal or physical control of the vehicle.

(J) **Put vehicle over sidewalk or curb.** Applicant put vehicle over curbs or sidewalks unnecessarily.

(K) **Weighted Offenses.** Accumulation of four (4) or more of any of the following offenses, in any combination:

(i) Failure to use turn signal.

(ii) Coasting on a downgrade (gears in neutral or clutch disengaged).

(iii) Consistently goes over speed limit.

(iv) Proceed through intersection on yellow light when applicant could stop without creating a dangerous situation.

(d) **Retesting.**

(1) Applicants who fail the skills examination for a driver license or the motorcycle endorsement may be granted the opportunity to retest on the next available regular business day as scheduling permits. When an applicant fails to qualify for a Class D license after three (3) skills examination attempts, he or she will be required to obtain a restricted driver license, restricting the individual to operating a motor vehicle while accompanied by a qualified licensed driver in the front seat, before another skills examination will be administered.

(2) The Department shall conduct the skills examination for the holder of a restricted Class D driver license not more than three (3) times beginning thirty (30) days from the date of issuance of the restricted license. Should the restricted licensee fail the third examination, the licensee shall wait thirty (30) days before being given another skills examination by the Department. The fourth and subsequent examinations shall be given not more than one (1) time every thirty (30) days thereafter at the request of the restricted licensee.

(3) In computing any time period prescribed by this subsection, the day of the failed examination from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is not a working day, in which event the period runs until the end of the next working day.

(e) **Minimum waiting period for examination.** The holder of a restricted driver license will not be eligible to have a skills examination administered until after a minimum of thirty (30) days following the issuance of such license, provided the applicant is at least eighteen (18) years of age. In computing the 30-day time period prescribed by this subsection, the day on which the restricted driver license is issued shall not be included. The last day of the period computed shall be included,

unless it is not a working day, in which event the period runs until the end of the next working day.

(f) **Skills examination when applicant must use special equipment.** Any applicant who must use special equipment, who has completed the standard skills examination and not been disqualified, will continue to drive an extended route, as provided in this subsection, in order to evaluate the operation of special equipment.

(1) The extended skills examination will be at least thirty (30) minutes long, making the total examination at least forty-five (45) minutes in duration. However, the individual may be given a four-minute rest stop midway through the examination.

(2) The extended skills examination may consist of interstate, expressway, or highway driving, or a combination of such driving situations, where possible so that a better evaluation may be rendered. Key points in this portion of the skills examination are as follows:

(A) Proper usage of acceleration and deceleration lanes,

(B) Lane usage,

(C) Highway speed control,

(D) Reaction to larger vehicles and fast traffic, and

(E) Use of special control devices.

(3) If the individual fails to adequately perform on the extended portion of the examination, at the discretion of the driver examiner, the individual will be notified when he or she is eligible to return for the next examination.

(g) **Substitute for skills examination.** A skills examination may be waived for a licensee when one of the following requirements is met:

(1) The licensee is applying for a Class D driver license, provided all established requirements for a Class D license have been satisfied, and the licensee is licensed at the time of application by one of the fifty (50) states, by the District of Columbia, by a Canadian province, or by another country; provided, the current driver examination requirements of the country must be on file with the Department and must meet or exceed the standards, specifications, and requirements of the Department as set out in this Subchapter [47 O.S. § 6-110(A)(2)] .

(2) The licensee:

(A) has enrolled in and successfully completed a course taught by an instructor certified by the Motorcycle Safety Foundation and using the Motorcycle Safety Foundation curriculum, and

(B) submits to the Department at the time of application for a motorcycle endorsement a Motorcycle RiderCourse? or an Experienced RiderCourse? completion card filled out by the certified instructor [47 O.S. §6-101(D)].

SUBCHAPTER 5. MEDICAL ASPECTS

PART 1. MEDICAL CONDITIONS

595:10-5-5. Metabolic diseases

(a) **Diabetes mellitus.**

(1) A person who has diabetes, about whom the Department has received a report from a law enforcement officer or from a licensed physician indicating the person is incapable of properly controlling a motor vehicle, must submit proof from his or her physician that the disease is under reasonable control without either hypoglycemic or hyperglycemic reactions severe enough to impair driving ability. Future periodic medical reports may be required.

(2) A person having been diagnosed by his or her physician as having insulin-dependent diabetes shall be required to have driving restriction code number six (6), "Food, fruit, or candy within reach of driver," on the person's driver license.

(3) A person who is a controlled insulin-dependent diabetic may obtain a Class A, B, or C intrastate commercial driver license provided the license bears driving restriction code number six (6), "Food, fruit, or candy within reach of driver~~,~~" ~~and driving restriction code number eight (8), "Precluding the operation of a school bus or commercial vehicle transporting passengers or dangerous or hazardous materials" on the person's driver license~~.

(b) **Hypoglycemia.** A person with severe or uncontrolled hypoglycemia (diagnosed low blood sugar) shall not be licensed until proof has been submitted from his or her physician that the condition is under control by proper care and diet.

SUBCHAPTER 13. PARENT-TAUGHT DRIVER EDUCATION

595:10-13-5. Requirements for parents and students

(a) **General information.** Prior to teaching a Department-approved and -certified parent-taught driver education course, a parent must first request a parent-taught driver education packet from the Department. The request can be made:

(1) in writing to: Oklahoma Department of Public Safety, Driver License Examining Division, P.O. Box 11415, Oklahoma City, OK 73136-0415

(2) by telephone to: ~~(405) 425-7746~~(405) 425-2057

(3) by e-mail to: parent@dps.state.ok.us

(4) through the Department of Public Safety website: www.dps.state.ok.us/dls/

(b) **Packet contents.** The packet will contain:

(1) A list of approved parent-taught driver education providers;

(2) ~~A copy of the rules in this Subchapter, OAC 595:10-13 Parent-taught Driver Education; and~~

~~(3)~~ An affidavit to be completed and returned to the Department prior to commencement of training by parent instructor(s), or the affidavit may completed and printed from the website of the Department.

(c) **Requirements for parents.**

(1) A parent-taught driver education course must be instructed by a parent as defined in 595:10-13-3.

(2) Every parent instructor must have a valid driver license which must be in the parent instructor's possession

at all times while performing behind-the-wheel instruction and must:

(A) not have had his or her driving privileges and driver license suspended, canceled, revoked, or denied within the past twelve (12) months;

(B) not have been convicted of possession or use of alcohol or drugs within the past twelve (12) months;

(C) not reflect more than five (5) point violations on his or her driving record; and

(D) have no administrative action by the Department pending pursuant to 47 O.S. §§ 753, 754, or 754.1 relating driving under the influence or pursuant to 47 O.S. §761 relating to driving while impaired.

(3) Every parent instructor shall exercise all due caution while instructing a behind-the-wheel session, taking into account:

(A) the alertness and responsiveness of the student,

(B) the traffic, weather, atmospheric, and road conditions,

(C) the time of day, and

(D) any other factors the parent deems may adversely influence the ability of the student to perform safely during the behind-the-wheel session.

(d) **Requirements for students.** Students must be at least fifteen (15) years of age to begin the written portion of the curriculum. The student must be at least fifteen and a half (15 1/2) years of age and must apply for and have been issued an learner permit prior to the commencement of any behind-the-wheel training. The permit must be in the student's possession at all times while performing behind-the-wheel training.

(e) **Requirements for the vehicle used in parent-taught driver education behind-the-wheel instruction and training.** Behind-the wheel instruction and training of a parent-taught driver education course shall only be performed in a vehicle which:

(1) is properly registered and display a valid license plate [see 47 O.S. Chapter 74 regarding vehicle registration laws],

(2) complies with vehicle equipment and safety standards [see 47 O.S. Chapters 12 and 13 for state vehicle equipment and safety laws], including, but not limited to, being equipped with seatbelts,

(3) complies with the vehicle liability insurance requirements of Oklahoma's Compulsory Insurance Law [See 47 O.S. § 7-600 et seq. regarding compulsory vehicle liability insurance]. Current proof of insurance must be carried in the vehicle at all times, and

(4) may be equipped with a second rear-view mirror for use by the parent performing the instruction. The Department recommends the use of a second rear-view mirror by the parent.

(f) **Limitation on vehicle occupancy.** The number of occupants in any vehicle being used for behind-the-wheel instruction in a parent-taught driver education course shall be limited to not more than two (2) parent instructors and not more than two (2) students.

(g) **Submission of affidavit.** Every parent shall submit the affidavit required by the Department, completed in full with all required information and signed by each parent desiring to be a parent instructor; provided, online applications may be received by submission without any signature. The parent must wait to begin a parent-taught driver education course until the affidavit has been accepted by the Department.

(h) **Acceptance of affidavit.** Upon acceptance of the affidavit, the Department shall return a copy of the affidavit, marked with a number assigned by the Department, to the parent(s). The parent(s) may then begin the parent-taught driver education course. The accepted affidavit shall be carried in the vehicle at all times it is being used for a behind-the-wheel session of an approved parent-taught driver education course.

(i) **No renewal of acceptance is required.** Acceptance of the affidavit by the Department is issued to the parent(s) with the understanding that no renewal of the acceptance is required with regard to the student(s) named on the affidavit. However, the Department may cancel the acceptance as provided in OAC 595:10-13-9.

(j) **Changes to information on affidavit.** The parent(s) shall notify the Department immediately, in writing, of any changes to the information on the accepted affidavit. The parent(s) shall temporarily suspend the instruction of the parent-taught driver education course until the Department has approved the changes.

[OAR Docket #12-719; filed 5-24-12]

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

[OAR Docket #12-720]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
Subchapter 1. General Provisions [AMENDED]
595:25-1-2. Definitions [AMENDED]
595:25-1-3. General policies [AMENDED]
Subchapter 5. All Wrecker Operators [AMENDED]
595:25-5-6. Schedule of rates and fees~~; indoor storage~~ [AMENDED]
Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements [AMENDED]
595:25-9-1. Oklahoma Highway Patrol Rotation Log [AMENDED]

AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 952

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595:25-5-6. Schedule of rates and fees~~; indoor storage~~ [AMENDED]
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N/A
ANALYSIS:
Amendments to 595:25-1-12 clarify the definition of a General Class wrecker. Amendments to 25-5-2 update the statutory reference relating to lighting equipment on wrecker vehicles.
The proposed actions are amendments to existing rules.
The circumstance which created the need for these rules is the passage of EHB 2969 (2010) which amended certain laws related to wrecker vehicles.
The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law, to ensure the safety of the motoring public, and to provide guidance to wrecker services.
CONTACT PERSON:
David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

595:25-1-2. Definitions

Any reference to "this Act" means 47 O.S. § 951 et seq. unless otherwise specified. The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Call" means each request for service of an operator resulting in an operator being able to receive compensation for these services.

"Class AA wrecker operator" means any wrecker operator who also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies.

"Class AA truck wrecker operator" means any wrecker operator who also meets all the requirements of 47 O.S. § 952(D) for towing for law enforcement agencies.

"Commissioner" means the Commissioner of Public Safety, as defined by 47 O.S. § 1-109 and as described in 47 O.S. § 2-102.

"Department" means the Department of Public Safety.

"Junk vehicle" means a vehicle which is ten (10) years old or older and worth less than three hundred dollars ($300.00) [42 O.S. § 91].

"Law enforcement tow" means a tow of a vehicle made by an operator when a law enforcement officer compels a vehicle be towed or makes a request for a tow using a law enforcement rotation log and to which the ~~rate~~rates and fees as prescribed ~~in 47 O.S. § 953.1~~by the Corporation Commission shall apply.

"Officer" means any peace officer.

"Operator" means any person or legal entity owning or operating a licensed wrecker vehicle or a licensed wrecker or towing service and any employee thereof.

"Owner request tow" means a tow of vehicle made by an operator at the request of the owner, or authorized agent of the owner and which is not compelled or required by a law enforcement officer.

"Place of business" means a permanent structure, not mounted on wheels, occupied by the wrecker operator at the physical address of the wrecker service, as shown on the wrecker license, with phone service and functioning utilities including but not limited to electricity and water, where normal business is transacted and all wrecker records are maintained. Effective January 1, 2005, the place of business shall be located in Oklahoma.

"Private Property Tow" means a tow of a vehicle which is made from private property by an operator at the request of the owner, legal possessor, or authorized agent in control of the real property, which shall be towed under the provisions of 47 O.S. § 954A and to which the ~~rate~~ rates and fees as prescribed ~~in 47 O.S. § 953.1~~by the Corporation Commission shall apply.

"Rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators whose places of business are within the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA wrecker operators meeting the qualification of various categories of Class AA wrecker services except Class AA-TL wrecker vehicles.

"Tow/Towing"*means the use of a wrecker vehicle to lift, pull, move, haul or otherwise transport any other vehicle by means of: (a) attaching the vehicle to and pulling the vehicle with the wrecker vehicle, or (b) loading the vehicle onto and transporting the vehicle upon the wrecker vehicle".* [47 O.S. § 951(3)]

"Traffic tie-up" means any situation in which any officer deems it necessary to control the orderly flow of traffic.

"Truck wreckers" means every motor vehicle properly designed and equipped according to Department of Public Safety specifications with wrecker body and winch or lifting apparatus suitably designed to safely move, pull or tow wrecked, damaged or disabled trucks, truck-tractors, road tractors, trailers, semi-trailers, buses and/or other vehicles and conveyances that use the highways of the state of Oklahoma. The designation as a truck wrecker shall be used for Class AA-TL wrecker vehicles only.

"Truck wrecker rotation log" means a list for each Highway Patrol Troop of the Department of current Class AA wrecker operators, meeting the qualifications of Class AA truck wrecker services, whose places of business are with in the geographical boundaries of the Troop and who have requested and been approved by the Department to be on the list. This list governs the alternation among approved Class AA-TL truck wrecker operators only.

"Wrecker dolly" means a wheeled device which is used to support one end of a motor vehicle for towing.

"Wrecker license" means the wrecker license as provided by 47 O.S. § 951, et. seq.

"Wrecker operator" means any operator who is licensed under this Chapter and the laws of this state and who meets all requirements of the rules of this Chapter, pertaining to wrecker vehicles as defined in this Chapter.

"Wrecker or towing service", **"wrecker service"**, or **"towing service"***means engaging in the business of or performing the act of towing or offering to tow any vehicle, except: (a) where the operator owns the towed vehicle and displays on both sides of the wrecker vehicle in plainly visible letters not less than two (2) inches in height the words "NOT FOR HIRE", (b) where the service is performed by a transporter as defined in [47 O.S.] section 1-181 of this title, (c) where service is performed in conjunction with the transportation of household goods and property, (d) where the wrecker vehicle is owned or operated by the United States government, the State of Oklahoma, or any department or political subdivision thereof, or (e) where the service is performed by an out-of-state wrecker service at the request of the vehicle owner or operator, and the vehicle is being towed: (1) in either direction across the border between Oklahoma and a neighboring state, or (2) through Oklahoma in transit to another state; provided, the out-of-state wrecker service shall comply with all other requirements regarding interstate commerce as set forth in law.* [47 O.S. § 951(6)]

"Wrecker" or **"wrecker vehicle"**, as defined by 47 O.S. § 951, et. seq., means any vehicle, other than a transport as defined in 47 O.S. § 1-181, equipped with a winch, cable or other device designed to lift, pull or move a disabled vehicle incapable of self-propulsion. (Does not include a vehicle with a push bumper only.)

(A) Class AA -- Any wrecker vehicle not less than nine thousand pounds (9,000 lbs.) GVWR and meeting minimum requirements as established for Class AA Wreckers in this Chapter.

(B) Class AA-TM -- Any wrecker vehicle not less than twenty-four thousand pounds (24,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TM Wreckers in this Chapter.

(C) Class AA-TL -- Any wrecker vehicle not less than forty-four thousand pounds (44,000 lbs.) GVWR and meeting minimum requirements as established for Class AA-TL Wreckers in this Chapter.

(D) Class General -- All other wrecker vehicles as defined by 47 O.S. § 951, et. seq., provided a Class General wrecker shall also be considered a wrecker support vehicle for the purposes of 47 O.S. § 12-218.1.

595:25-1-3. General policies

(a) All operators of wrecker or towing services shall conduct operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Department of Public Safety and rules and orders of the Corporation Commission.

(b) Each operator shall be knowledgeable of the laws of this state, as found in 47 O.S. § 951 et.seq., and the rules of this Chapter and the rules and orders of the Corporation Commission relating to wrecker and towing services and wrecker vehicles. Each operator shall maintain at least one (1) copy of said laws and rules on the premises of the place of business at the address specified on the license and shall require every employee to be knowledgeable of the laws and rules.

(c) All rules in this Chapter are subject to the Administrative Procedures Act 75 O.S. § 309, et. seq., and to 47 O.S. § 951 et. seq., which shall be incorporated herein by reference, as applicable to the Department and all parties governed by this Chapter.

(d) The Department shall be charged with the duty of enforcing the provisions of 47 O.S. §951 et seq. except for rates and fees charged by wrecker services, which shall be under the authority of the Corporation Commission.~~Its~~The duly appointed officers of the Department shall have authority to make arrests for violation of law and the provisions of the rules of this Chapter.

(e) Any Oklahoma statute now existent or duly enacted in the future shall supersede any conflicting provision of the rules of this Chapter to the extent of such conflict, but shall not affect the remaining provisions herein.

(f) Any violation of the rules of this Chapter may result in license suspension, revocation and/or penalty provisions in accordance with 47 O.S. § 951, et. seq.

(g) Every operator shall cooperate with the Department should it become necessary to review, audit, examine, or investigate any records relating to the operation of the wrecker service. Any operator who fails to cooperate with any review, audit, investigation shall be subject to suspension, revocation or cancellation of his or her wrecker license in accordance with 47 O.S. § 951, et. seq.

SUBCHAPTER 5. ALL WRECKER OPERATORS

595:25-5-6. Schedule of rates and fees~~; indoor storage~~

~~(a)~~ **~~Schedule of~~Posting of schedule of rates and fees.** The operator shall at all times keep a copy of the current schedule of rates and fees~~, provided by the Department,~~ posted in a conspicuous place, readily accessible to the public.

~~(b)~~ ~~**Posting of schedule.** Fees for vehicles towed at the request of any law enforcement agency shall not exceed fees for similar vehicles towed at the request of a driver or owner when said service is provided under the same or similar conditions.~~

~~(c) **Service fees.** The operator shall charge fees based upon the classification of the towed vehicle, as prescribed by the Department [47 O.S. §§ 953.1 and 953.2].~~

~~(d) **Indoor storage.** The operator shall not charge for indoor storage unless indoor storage:~~

~~(1) Has been specifically requested by the owner or operator of the vehicle,~~

~~(2) Has been ordered by the law enforcement officer requesting the towing and storage of the vehicle, or~~

~~(3) Is necessary to prevent further damage to the vehicle and/or property if left outside in inclement weather conditions.~~

~~(e) **After hour release fee.**~~

~~(1) **Notification.** Whenever the owner, leinholder, or agent of the owner or leinholder requests after hour release of a stored vehicle, the wrecker operator or licensee shall notify the person that after hour release of the vehicle may be more costly than releasing the vehicle during normal business hours on the following day.~~

~~(2) **Calculating the fee.** The after hour release fee of Fifteen Dollars ($15.00) per quarter hour [47 O.S., § 953.2(E)(3)] may include, as provided in this subsection, time spent by the wrecker owner or operator during the period of time designated in 47 O.S. § 953.2(E)(2)(a):~~

~~(A) traveling to the location where the vehicle is stored,~~

~~(B) waiting for the person to whom the vehicle will be released,~~

~~(C) processing the vehicle and paperwork for release.~~

~~(3) **Travel time.** Travel time shall be calculated from the time the wrecker owner or operator receives notification that after hour release of a vehicle is desired until the lesser of the following occurs:~~

~~(A) thirty (30) minutes has expired, or~~

~~(B) the person to whom the vehicle is to be released meets the wrecker owner or operator at the location where the vehicle is stored.~~

~~(4) **Waiting time.** Waiting time shall be calculated from the time the person picking up the vehicle has requested to wrecker owner or operator to meet the person at the location where the vehicle is stored until the lesser of the following occurs:~~

~~(A) one (1) hour has expired, except as provided in (7) of this subsection, or~~

~~(B) the person arrives at the location where the vehicle is stored.~~

~~(5) **Processing time.** Processing time shall be calculated from the time the person to whom the vehicle is to be released arrives at the location where the vehicle is stored until such time as the person actually removes the vehicle from that location.~~

~~(6) **No-show.** If the person to whom the vehicle is to be released does not present himself or herself at the location where the vehicle is stored at the time requested or agreed upon by that person, the wrecker owner or operator shall charge no more than one (1) hour waiting time.~~

~~(7) **Extension of arrival time.** If the person to whom the vehicle is to be released notifies the wrecker owner or operator of a later arrival time than previously agreed upon, the wrecker owner may extend the charge for waiting time for up to an additional hour, as provided in (4) of this subsection, from the time of notification of the later arrival time. If the previous waiting time has not exceeded one (1) hour, the wrecker owner or operator shall begin a new waiting time upon receiving notification of the later arrival time. Nothing shall prohibit the wrecker owner or operator from charging for waiting time for each such extension of the arrival time.~~

~~(8) **Documentation.** Any and all such times shall be documented on the invoice.~~

SUBCHAPTER 9. OKLAHOMA HIGHWAY PATROL ROTATION LOG - ADDITIONAL REQUIREMENTS

595:25-9-1. Oklahoma Highway Patrol Rotation Log

(a) **Official Rotation Log.** The Department of Public Safety maintains two (2) official Oklahoma Highway Patrol Rotation Logs, a Class AA wrecker log and a Class AA-TL wrecker log, each of which shall consist of licensed wrecker services *for the performance of services carried out pursuant to the request of or at the direction of any officer of the Department* [47 O.S. §952(D)].

(b) **Request for placement on the Rotation Log.** A licensed Class AA wrecker service desiring to be placed on the Highway Patrol Rotation Log in the Highway Patrol Troop District in which the place of business and the primary storage facility of the wrecker service is located shall file a written request with the Department, pursuant to (e) of this Section. [47 O.S. §952(D)]

(c) **Assignment to the Rotation Log.** If a request for placement on the Rotation Log is approved by the Department, the wrecker service shall be assigned by the Department to the Highway Patrol Troop District specified on the request. Both the Troop Commander of the Troop District and the wrecker service will be notified by the Department of the assignment of the wrecker service to the Rotation Log. [47 O.S. §952(D)]

(d) **Geographical areas of rotation.** [47 O.S. §955(B)]

(1) The Director of the Wrecker Services Division shall be responsible for establishing geographical areas of rotation within the Troop District to which wrecker services on the District's Rotation Log will be assigned for operation when responding to calls for service from the Rotation Log. The Director shall notify each wrecker service of the geographical area of rotation to which it is assigned.

(2) The Director will establish each geographical area of rotation based upon a reasonable radius from the primary storage facility of each wrecker service operating within the geographical area. The reasonable radius will be determined by the Director based upon:

(A) the estimated time it will take the wrecker service to respond to calls for service,

(B) the number of wrecker services available on the Rotation Log,

(C) conformity with 47 O.S. §955(B),

(D) consideration of the economic impact of the wrecker services rates and fees ~~and charges [see 47 O.S. §953.1 regarding maximum fees and charges for wrecker services]~~, as prescribed by the Corporation Commission, on the owner or lienholder of the vehicle; and

(E) other factors within the Troop District as deemed appropriate by the Director.

(3) The Director may overlap geographical areas of rotation whenever necessary to ensure adequate response to requests for wrecker services.

(4) The Director may modify geographical areas of rotation for the Troop District at any time and for just cause, but shall notify as soon as practicable each wrecker service affected of such modifications.

(5) The Director may extend any geographical area of rotation by a reasonable radius beyond the boundaries of the Troop District to include on the rotation log of the District a wrecker service:

(A) which is located outside of but in proximity to the boundary of the District, and

(B) upon receiving notification from the Department of the approval of the wrecker service for placement on the rotation log for the District of the Commander.

(6) Nothing in this Section shall prohibit the Troop Commander from using the services of any licensed wrecker service:

(A) outside of its assigned geographical area of rotation, or

(B) which has not been assigned to the Rotation Log of the Troop District.

(e) **Forms.** A request for placement on any rotation log shall be filed by the wrecker service with the Department of Public Safety on a form prescribed and provided by the Department [47 O.S. §952(D)]. When requesting placement on a rotation log, the wrecker service shall provide on the request one (1) telephone number to be used for request of services during the day and one (1) telephone number to be used for request of services during the night, specifying the time period of normal use; these numbers shall also be on file with the Wrecker Services Division. Any change in the telephone numbers shall be immediately transmitted to:

(1) the Troop Commander(s) of the Oklahoma Highway Patrol Troop District(s) on whose Rotation Log the wrecker service has been assigned, and

(2) the Wrecker Services Division of the Department of Public Safety.

(f) **Request for removal from the Rotation Log.** A licensed Class AA wrecker service desiring to be removed, whether temporarily or permanently, from the Highway Patrol Rotation Log on which it was placed, pursuant to this section, shall file a written request with the Department. The wrecker service shall not contact the Troop Commander(s) of the Troop District(s) for removal from the Rotation Log.

[OAR Docket #12-720; filed 5-24-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 35. ENFORCEMENT OF OKLAHOMA MOTOR CARRIER SAFETY AND HAZARDOUS MATERIALS TRANSPORTATION ACT

[OAR Docket #12-720A]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference [AMENDED]
595:35-1-9. Hearings [AMENDED]
595:35-1-10. Administrative penalty assessment guidelines [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. § 230.4(1) and (2); 75 O.S., § 250.4(A)(8)
DATES:
Comment Periods:
January 17, 2012, through February 17, 2012
Public Hearing:
No hearing was held or requested.
Adoption:
March 28, 2012
Submitted to Governor:
March 28, 2012
Submitted to House:
March 28, 2012
Submitted to Senate:
March 28, 2012
Gubernatorial approval:
May 2, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 23, 2012.
Final Adoption:
May 23, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amendments to this chapter would bring rules into conformity with federal regulations.
The proposed actions are amendments to existing rules.
The circumstance which created the need for these rules is to remove or update language which is not in conformity with or is contradictory to federal regulations.
The intended effect of these rules is to allow the Department of Public Safety to perform its duties as required or authorized by law.
CONTACT PERSON:
David W. Beatty, Administrative Rules Liaison, Department of Public Safety, 3600 N. M.L. King Ave., P.O. Box 11415, Oklahoma City, OK 73136-0415. Phone: (405) 425-2024. Email: dbeatty@dps.state.ok.us.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

595:35-1-6. Deletions, substitutions, and additions to federal rules adopted by reference

(a) **Changes.** The changes in this Section to the federal rules adopted by reference in 595:35-1-4 apply only to intrastate commerce.

(b) **Terminology.** Unless otherwise specified, the following terminology shall apply:

(1) "Department," as defined in 595:35-1-2, shall be substituted wherever the term "Department of Transportation" or "Federal Motor Carrier Safety Administration" is used.

(2) "Commissioner," as defined in 595:35-1-2, shall be substituted wherever the term "Federal Motor Carrier Safety Administrator" or "Regional Director" is used.

(3) "Troop S," as defined in 595:35-1-2, shall be substituted wherever the term "Office of Motor Carriers" or "Motor Carrier Division" is used.

(c) **Scope of Definitions.** The definitions provided in (b) of this Section are limited in application to the Act and the rules adopted to carry out the Act. These definitions do not alter, replace or change any other definitions contained in Title 47 of the Oklahoma Statutes.

(d) **Exceptions in the transportation of hazardous materials.**

(1) Cargo Tank Specifications [49 CFR §173.33(a)], concerning the qualifications and maintenance of cargo tanks used to transport hazardous materials, shall include the following exemption: Intrastate movements of petroleum products in nonspecification cargo tanks of 3,500 gallons and less by motor carriers transporting petroleum products solely in intrastate commerce may continue, provided the cargo tanks meet the general packaging requirements of 49 CFR §173.24, except specification packages as stated in paragraph (c), and have been in actual operation transporting similar materials prior to October 1, 1987. This provision will expire on January 1, 1999. Any retrofitting of cargo tanks after October 1, 1987 shall be made to meet specification requirements for the type of hazardous material transported in them. This exemption does not apply if at any time after October 1, 1987 the cargo tank is sold or ownership of the cargo tank is otherwise transferred.

(2) The transportation of agricultural product other than a Class 2 material, over local roads between fields of the same farm, is excepted from the requirements of 49 CFR §§100 through 199 when transported by a farmer who is an intrastate private motor carrier.

(3) The transportation of an agricultural product to and from a farm, within 150 miles of the farm, is excepted from the requirements in subparts G and H of part 172 of 49 CFR §§100 through 199 when:

(A) It is transported by a farmer who is an intrastate private motor carrier.

(B) The packaging conforms to the requirements of 49 CFR §173.24 in so far as it does not leak, and the total amount of the agricultural product being transported on a single vehicle does not exceed:

(i) 16,094 pounds (7,300 kilograms) of ammonium nitrate fertilizer properly classed as Division 5.1, PG III, in a bulk packaging, or

(ii) 502 gallons (1,900 liters), for liquids or gases, or 5,070 pounds (2,300 kilograms), for solids, of any other agricultural product.

(C) Each person having any responsibility for transporting the agricultural product or preparing the product for shipment has been instructed in the applicable requirements of 49 CFR §§100 through 199.

(D) Formulated liquid agricultural products in specification packagings of 58 gallons (220 liters) or less capacity, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or transported for loading aboard an airplane for aerial application.

(E) Pertaining to nurse tanks of anhydrous ammonia [see 49 CFR §173.315(m)].

(4) Permission to drive a transport vehicle in intrastate commerce containing a hazardous material in an emergency without the proper markings or placards, as provided under Marking and Placarding Motor Vehicles [49 CFR §177.823(a)(2)] shall be obtained from the following: Department of Public Safety, Troop S, Commercial Vehicle Enforcement Division, P. O. Box 11415, Oklahoma City, OK 73136-0415, Phone: (405) 521-6104.

(e) **Motor Carrier Identification Report.**

(1) **Applicability.** All motor carriers conducting operations in intrastate commerce shall file a Motor Carrier Identification Report (Form MCS-150) before commencing operations, or if already operating, as soon as practical.

(2) **Availability.** The Motor Carrier Identification Report with complete instructions, is available from:

(A) Department of Public Safety:

(i) in person: Troop S Headquarters, ~~32 NE 23rd Street~~220 NE 38th Terrace, Oklahoma City

(ii) by mail: Troop S, P.O. Box 11415, Oklahoma City, OK 73136-0415

(iii) by telephone: (405) ~~521-6103~~702-0813

(B) Corporation Commission:

(i) in person: 2101 N. Lincoln Blvd., Oklahoma City

(ii) by mail: P.O. Box 52000, Oklahoma City, OK 73152-2000

(iii) by telephone: (405) 521-2251

(C) Oklahoma Division Office of the Federal Motor Carrier Safety Administration:

(i) in person or by mail: 300 N. Meridian, Suite 106 S., Oklahoma City, OK 73107

(ii) by telephone: (800) 823-5660

(iii) from the internet: *http//www.fmcsa.dot.gov/*

(3) **Filing.** The completed Motor Carrier Identification Report shall be filed:

(A) **Intrastate carriers.** For intrastate carriers, the Report must be filed with either:

(i) Department of Public Safety, Commercial Vehicle Enforcement Section, ~~32 NE 23rd Street~~220 NE 38th Terrace, P.O. Box 11415, Oklahoma City, OK 73136-0415, or

(ii) Corporation Commission, 2101 N. Lincoln Blvd., P.O. Box 52000, Oklahoma City, OK 73152-2000.

(B) **Interstate carriers.** For interstate carriers, the Report must be filed at the address as indicated on the Motor Carrier Identification Report.

(4) **Motor carrier name.** Only the legal name or single trade name of the motor carrier may be used on the Motor Carrier Identification Report.

(5) **Penalties.** A motor carrier who fails to file a Motor Carrier Identification Report or who, upon the report, furnishes misleading information or makes false statements is subject to the penalties prescribed in 47 O.S., § 230.9.

(6) **Issuance and display of USDOT number.** Upon receipt and processing of the Motor Carrier Identification Report, an identification number (USDOT number) will be issued to the motor carrier. The motor carrier must display the number on each self-propelled commercial motor vehicle, as defined in 595:35-1-5, along with the additional information required by 49 C.F.R., Part 390.21. Intrastate USDOT numbers shall be displayed as follows:

(A) the letters "USDOT",

(B) the identification number itself, and

(C) the suffix letters "OK".

(f) **Qualification of drivers.** The following addition is made to the federal requirement in Qualifications of Drivers [49 CFR §391.11(b)(1)] that a driver be twenty-one (21) years of age or older: A driver in solely intrastate commerce must be at least eighteen (18) years old and be at least twenty-one (21) years old for the transportation of hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823 or for transporting more than eight (8) passengers for compensation or more than fifteen (15) passengers not for compensation.

(g) ~~**Maximum driving and on-duty time.** The following exception is added to the federal restrictions on Maximum Driving and On-Duty Time [49 CFR §395.3(a)(1)] as required by the Act [47 O.S. §230.15(d)]: More than eleven (11) hours following ten (10) consecutive hours off duty, except the maximum driving time within a work period is twelve (12) hours and the maximum on-duty time is fifteen (15) hours following eight (8) consecutive hours off duty if the vehicle:~~

~~(1) is engaged solely in intrastate commerce, and~~

~~(2) is not:~~

~~(A) transporting hazardous materials which are required to be placarded or marked in accordance with 49 CFR §177.823, or~~

~~(B) a vehicle designed to transport 15 passengers.~~

~~(h)~~ **Relief from regulations.**

(1) Anyone requesting relief from the hours of service regulations must contact the Troop Commander or, if declared to be unavailable by personnel at the Troop headquarters, the duty supervisor at the Troop headquarters for the region in which the emergency exists. This contact must be made and the prior approval obtained before the requesting party may claim relief from the regulations. The requesting party must provide the following information:

(A) the type of emergency,

(B) if applicable, the company on whose behalf the requesting party is seeking the exception,

(C) the region the emergency covers,

(D) the type of work required to restore services in the area, and

(E) the approximate time to restore those services.

(2) The decision to declare an emergency and grant relief from the regulations rests in the sound discretion of the Troop Commander or duty supervisor.

(3) Upon completion of the emergency restoration services, any on duty hours accumulated during the emergency will be counted against the driver's allowable on duty hours and the driver may not drive as long as the amount of accumulated on duty hours exceeds those allowed by 49 CFR §395.3. However, any period of eight (8) consecutive days may end with the beginning of an off-duty period of twenty-four (24) or more successive hours when taken at the end of any emergency restoration service.

(4) Within thirty (30) days after completion of the emergency restoration services, the individual who had been granted relief from the hours of service regulations must submit a report detailing the following:

(A) Nature and extent of the emergency,

(B) Type of services restored during the emergency,

(C) Names and driver license numbers of those drivers for which the exemption was granted, and

(D) Total hours on duty during the declared emergency for each driver.

(5) Said report must be sent to the following address: Department of Public Safety, Troop S, P. O. Box 11415, Oklahoma City, OK 73136-0415.

595:35-1-9. Hearings

(a) In responding to the Notice of Probable Violation, the respondent may submit to the official who issued the notice written explanations, information, or arguments in response to the allegations or the amount of the assessed penalty set forth in the Notice of Probable Violation. The contents of the informal response will be reviewed by the Commissioner's representative who may choose to amend, dismiss, or let the Notice of Probable Violation remain as issued. If the Commissioner's representative does not dismiss the administrative penalty in whole, the respondent shall be notified as soon as reasonably possible. The respondent shall then be given either the longer of the twenty-five (25) days still outstanding or at least ten (10) days to pay the penalty. Should a proposed settlement be rejected by the respondent, the amount of the assessed penalty set forth in the Notice of Probable Violation shall be reinstated.

(b) Any request for a hearing must be filed by the respondent with the ~~Department's Legal Division~~Department of Public Safety, Troop S, P.O. Box 11415, Oklahoma City, OK 73136-0415 within twenty-five (25) days after the Notice of Probable Violation was sent.

(c) The request for a hearing must be in writing and must:

(1) state the name and address of the respondent and of the person submitting the request if different from the respondent,

(2) state which allegations of violations, if any, are admitted,

(3) state generally the issues to be raised by the respondent at the hearing, but issues not raised in the written request are not barred from presentation at the hearing, and

(4) be addressed to the official who issued the notice.

(d) If the hearing is timely requested, such hearing shall be scheduled either at the Department or by telephone.

(e) The Commissioner shall designate the hearing officer. Each party shall be afforded the opportunity to respond and present evidence and argument on all issues involved. Either party may make application for a continuance of the hearing. The granting or denial of such a continuance is within the reasonable discretion of the hearing officer.

(f) The Commissioner or the hearing officer will determine, at his discretion, whether the hearing will be conducted in person or telephonically. Where a telephonic hearing is designated, the procedure specifically applicable to telephonic hearings will be provided to the respondent and the respondent's attorney, if designated, along with the notice letter confirming that the hearing has been scheduled.

(1) Within ten (10) days after receiving notice that the hearing is being held telephonically, the respondent must provide to the Department:

(A) the name, mailing address, and phone number of the respondent's attorney, if the respondent is being represented by an attorney,

(B) the name, mailing address(es), and telephone numbers of any witnesses on the respondent's behalf who the respondent desires to have present, and

(C) the telephone number at which the respondent will be available.

(2) If the respondent, the investigating officer, or a witness desires to have additional exhibits or documentary evidence included in the hearing, the exhibits or evidence must be delivered to the Department's Legal Division at least ten (10) days prior to the hearing. The hearing officer may consider documentary evidence if it is received in time for the hearing. The materials shall be mailed to: Department of Public Safety, Legal Division MCSAP Hearing Officer, P.O. Box 11415, Oklahoma City, OK 73136-0415.

(3) At or near the time scheduled for the hearing, the hearing officer will call all parties to the hearing at the telephone number(s) provided. If the telephone line for any of the parties is busy, or a party fails to answer, the hearing officer will call again approximately three (3) minutes later.

(A) All parties will be sworn in prior to testimony.

(B) If the rule of sequestration is invoked pursuant to 12 O.S. §2615, the appropriate witness will be disconnected from the conference call by the hearing officer and reconnected prior to testimony.

(4) When the respondent or the designated attorney fails to provide a telephone number or to answer the telephone number provided to the Department, or the line is busy after the hearing officer has attempted a second call after the three (3) minutes as provided in (3) of this subsection, the hearing officer will not call again and an order of default will be entered. It is the responsibility of the respondent to keep the line(s) open to receive the call from the hearing officer.

(5) Should a necessary witness adverse to the licensee, such as an officer, fail to provide a telephone number or to answer or the line is busy, after the procedure provided in (3) of this subsection has been followed, the case will be set aside.

(g) The hearing officer shall render a decision based upon the law and the evidence presented. Each party shall be promptly notified of the decision either personally or by mail.

(h) Unless the hearing officer timely receives a written request for a rehearing, reopening, or reconsideration of the decision as provided by the Administrative Procedures Act [75 O.S. §317], the hearing officer shall, after twenty (20) days from the entry of the decision, enter an appropriate final order. Each party shall be notified of the final order personally or by mail.

(i) If the respondent fails to appear at the scheduled hearing without good cause, the hearing officer shall record the nonappearance and enter a final order reflecting the effective date of twenty-five (25) days after the date of the Notice of Probable Violation in lieu of the decision and final order as described in (h) of this Section.

(j) If the representative fails to appear without good cause, the hearing officer shall record the nonappearance and enter a final order dismissing the administrative penalty action, with prejudice. The parties shall be notified that the department action has been dismissed with prejudice. However such a dismissal affects only those violations listed in the Notice of Probable Violation and does not affect the same or other violations occurring at another time.

(k) A party aggrieved with the hearing officer's decision may file an appeal with the Commissioner requesting reopening or reconsideration of the case [75 O.S. §317]. Such an appeal must:

(1) be in writing,

(2) be within twenty (20) days of the entry of the decision by the hearing officer, and

(3) state the grounds for the appeal and include all arguments and information pertinent to the grounds for appeal.

(l) Where a timely written request for a rehearing, reopening, or reconsideration of the case is received, the administrative penalty will be suspended until a final order has been entered. Grounds for rehearing are limited to those in the Administrative Procedures Act [75 O.S. §317].

(m) The administrative penalty assessed shall be due immediately upon issuance of the final order. If, within twenty-five (25) days after the issuance of a final order, the concerned party does not comply with the terms of the order by paying any administrative penalty assessed or correcting the violation, or both, if required, or by filing an appeal of the final order, the case may be prosecuted by the Commissioner or the representative for enforcement through the Oklahoma County District Court.

(n) A respondent aggrieved with both the hearing officer's and the Commissioner's decisions may file an appeal with the Oklahoma County District Court.

(o) At any time prior to the Commissioner or the representative bringing an action in Oklahoma County District Court for enforcement of the final order, either the respondent or the Commissioner's representative, whose names appears on the Notice of Probable Violation, may recommend a compromise of the amount of the penalty by submitting an offer for a specific amount to the other party. An offer of compromise shall be submitted to the representative who may, after consultation with the Troop S Commander, accept or reject it.

(1) A compromise offer stays the running of any response period then outstanding.

(2) Any compromise agreed to by the parties is also subject to approval by the hearing officer. If a compromise is agreed to by the parties and approved by the hearing officer, the respondent will be notified in writing. Upon receipt of payment by the Department, the respondent will be notified in writing that acceptance of the payment is in full satisfaction of the administrative penalty proposed or assessed, and the Department closes the case with prejudice to the respondent.

(3) If a compromise cannot be agreed to, the respondent will be notified, either personally or by mail, and shall be given ten (10) days or the amount of time remaining in the then outstanding response period, whichever is longer, to respond to whatever action has been taken by Troop S or any other representative authorized to enforce the provisions of the Act.

(p) The administrative penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other non-duplicative remedies, particularly if the Commissioner has determined an order requiring compliance is necessary under the circumstances. Money penalties are not fees allowing the concerned party to continue to operate in violation of the Act or of any rules adopted to carry out the Act. [47 O.S. §230.9(F)]

595:35-1-10. Administrative penalty assessment guidelines

(a) **General.** The Act does not recommend or suggest specific penalties for violation of the Act or any rules adopted to carry out the Act. Instead, the Act lists certain elements which the Commissioner or the Commissioner's representative may take into account in assessing penalties and establishes the maximum penalty for categories of violations. These guidelines serve to ensure the public and the respondent that assessment decisions will be made rationally and objectively on the merits of each case. [47 O.S. §§ 230.6 and 230.9]

(1) These guidelines are not meant to be used to determine when enforcement action will be taken, nor are they meant to be a rigid requirement. Instead, they are meant to assist the Commissioner or the representative in assessing each administrative penalty based on the seriousness of the underlying offense. For example, the fine for violations such as stop light violations or horn or other similar equipment failure violations would not exceed that authorized by statue if adjudged in a court of competent jurisdiction. However, repeated violations of this nature would evidence a pattern of safety violations which would fall within one of the categories set forth in (b) of this Section.

(2) If a hearing is necessary, the hearing officer may eventually assess an administrative penalty which is different than the original administrative penalty imposed in the Notice of Probable Violation.

(3) Because of the volume of violations, the examples in this section are not all inclusive; they are only intended to serve as a guide for the types of violation categories. The Code of Federal Regulations incorporated by reference contains the complete listing of all violations covered by this Act.

(b) **Categories of violations.** The Act separates the types of violations into the following four categories:

(1) **Record keeping violations.** [47 O.S. §230.9(B)(1)] These are violations of the administrative requirements of the Act, including failure to make, require, or keep records, or the falsification of entries in the records required by the Department of Transportation regulations pertaining to motor carrier safety as adopted and contained in Title 49 of the Code of Federal Regulations (CFR).

(A) The Act provides for a penalty not to exceed one hundred dollars ($100.00) for each record keeping offense.

(B) The Act further provides that each day of a violation shall constitute a separate offense against any respondent, provided that the total penalties for all offenses relating to any single violation shall not exceed five hundred dollars ($500.00).

(C) Some examples of record keeping violations include:

(i) Failure to properly maintain complete driver qualification files on each driver employed [49 CFR §391.51].

(ii) Record of duty status violations [49 CFR §395.8].

(iii) Failure to keep maintenance and inspection records [49 CFR §396.3].

(iv) Failure to prepare or retain driver's vehicle inspection reports. [49 CFR §396.11].

(2) **Serious pattern of safety violations.** [47 O.S. §230.9(B)(2)] The Act provides for a fine of Two Hundred Dollars ($200.00) for each offense not to exceed One Thousand Dollars ($1,000.00) for each serious pattern of safety violation. The Commissioner or the representative may find a serious pattern of safety violations exists if

the respondent has repeatedly violated equipment and operational requirements of the Act, and such violations are of a nature which indicates they are not the result of isolated human error but are of a tolerated pattern which the respondent could have detected and corrected if he or she wanted to meet his or her full safety responsibility to the public. Although any single violation may not by itself have a high probability of causing an accident, the violations taken as a whole may collectively demonstrate the respondent's unwillingness to exercise proper safety supervision or control which will eventually lead to accidents. Examples of some violations which may be included in a serious pattern of safety violations are:

(A) Scheduling a run which would necessitate the vehicle being operated at speeds in excess of those prescribed [49 CFR §392.6].

(B) Light violations [49 CFR §393.11].

(C) Failure to cover a battery [49 CFR §393.30].

(D) Failure to protect or support electrical wiring [49 CFR §393.28].

(E) Making detachable wiring connections by twisting together wires [49 CFR §393.32].

(F) Failure to maintain a motor vehicle windshield free of prohibited damage, or using prohibited vision reducing matter upon windshield or windows [49 CFR §393.60].

(G) Failure to mark push out or escape windows [49 CFR §393.63].

(H) Sleeper berth violations [49 CFR §393.76].

(I) Heater violations [49 CFR §393.77].

(J) Failure to maintain a motor vehicle with:

(i) a defroster [49 CFR §393.79],

(ii) two rear vision mirrors [49 CFR §393.80].

(iii) an operative horn [49 CFR §393.81], or

(iv) an operable speedometer [49 CFR §393.82].

(K) Failure to mark bus emergency exits [49 CFR §393.92].

(L) Violations of the driver's requirements including:

(i) hours of service violations [49 CFR §395.3], or

(ii) failure to maintain a log book [49 CFR §395.8].

(M) Inspection violations as per 49 CFR 396.3(A)(2), §396.98.

~~(N) Operating a motor vehicle without an operative stop lamp at any time of the day or night, or without operative head lamps or steady burning rear lamps during the period of one-half hour after sunset to one-half hour before sunrise. [49 CFR §393.9].~~

(3) **Substantial health or safety violations.** [47 O.S. §230.9(B)(3)] The Act provides for a penalty not to exceed One Thousand Dollars ($1,000.00) per violation. This category includes any violation which, if allowed to continue, would result in accidents, deaths, injuries, and public property damage. Acts which are substantial health or safety violations are of a nature so blatant that no carriers or drivers could have operated vehicles on the public highway without knowing the defects existed, and therefore chose to disregard public safety. ~~Some examples of substantial~~Substantial health or safety violations are listed in the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria and include but are not limited to the following:

(A) Using a driver lacking training or experience to determine if the cargo or baggage has been properly located or secured [49 CFR §391.11(b)(4) or (5)], or a physically unqualified or disqualified driver [49 CFR §391.11(b)(6) and (9)].

(B) Brake violations:

(i) failure to maintain motor vehicle with adequate parking brake [49 CFR §393.41],

(ii) brake hose or tubing violation [49 CFR §393.45; §393.46],

(iii) failure to maintain motor vehicle with operative brakes [49 CFR §393.48],

(iv) failure to maintain motor vehicle with adequate brake linings [49 CFR §393.47], or

(v) failure to securely attach air or vacuum reservoir to motor vehicle [49 CFR §393.50].

(C) Fuel tank violations: Failure to securely attach fuel tank to motor vehicle [49 CFR §393.65].

(D) Violations and defects of lower and upper fifth wheels and certain safety devices [49 CFR §393.70].

(E) Violations of coupling devices and tow away methods [49 CFR §393.71].

(F) Tire violations [49 CFR §393.75].

(G) Exhaust system violations [49 CFR §393.83].

(H) Failure to load or equip vehicle so as to prevent shifting or falling of cargo [49 CFR §393.100].

(I) Failure to maintain vehicle with a header board or similar structure to prevent load shifting [49 CFR §393.106].

(J) Failure to obey any hazardous material regulation [49 CFR §397.2].

(K) Violations which would normally fall within the "serious pattern" category but which may be of such a severe nature that they constitute a substantial health or safety violation.

(4) **Gross negligence or reckless disregard.** [47 O.S. §230.9(D)] The Act provides that, except for record keeping violations, an employee shall not be liable for a violation of the Act unless the Commissioner determines that such actions of the employee constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for an administrative penalty not to exceed One Thousand Dollars ($1,000.00). Gross negligence exists where the employee acts in such a way which indicates complete disregard or indifference to the safety of other people's property or welfare.

(5) **Certain misuses of vehicles or containers.** [47 O.S. §230.6] The Act provides for a civil penalty assessed to an employee of not less that One Thousand Dollars ($1,000.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00). The Act also provides for a civil

penalty assessed to an employer of not less that Two Thousand Five Hundred Dollars ($2,500.00) nor more than Ten Thousand Dollars ($10,000.00). Some examples of certain misuses of vehicles or containers are:

(A) Operating, or requiring or permitting the operation of, a motor vehicle or container declared out of service before all required corrections are made [49 CFR § 396.9 (c)(2)].

(B) For a driver who is declared out of service, operating, or requiring or permitting the driver to operate, a motor vehicle before prescribed off duty or sleeper berth time has been accumulated [49 CFR §395.13(c)].

(c) **Factors.** The Act requires that the Commissioner or the representative take into account the following factors [47 O.S. §230.9(E)]:

(1) **Nature of the violation.** A consideration of the appropriate category of the violation.

(2) **Circumstances of the violation.** A broad consideration which includes both aggravating as well as mitigating factors known to the Commissioner or the representative at the time of the assessment.

(3) **Extent of the violation.** Requires the Commissioner or the representative to consider the magnitude, scope, frequency, and range of a violation. This is a major factor where there are numerous violations involving a large number of vehicles or employees of the respondent. It indicates that the respondent has a greater magnitude, frequency, and range of violations.

(4) **Gravity of the violation.** An evaluation of the seriousness of the violation. The seriousness is to be measured by the likelihood of the occurrence of the event, and the severity of the event if it occurred or were to occur. The gravity is not to be measured abstractly, but on a case-by-case basis taking into account all relevant factors.

(5) **Culpability.** The quality of the respondent's awareness of his or her actions, and the degree to which he or she was responsible for averting such violations. In determining the culpability of a respondent, ignorance is no excuse. Instead, culpability will be determined on the basis of whether the respondent knew or should have known of the violation, and to what extent the respondent had control of the violation.

(6) **History of prior offenses.** The Commissioner or representative will consider the respondent's performance record in terms of prior Notices of Probable Violation, prior warnings, citations, and prior compliance efforts of the respondent. Both similar violations and different types of violations in the past should be taken into account, but the similar past violations should be given more weight.

(7) **Ability to pay and ability to do business.** The Commissioner or the representative may consider the respondent's inability to pay or whether the payment of such a penalty would affect the respondent's ability to do business.

(8) **Such other matters as justice and public safety may require.** These are other matters, not specifically covered by one of the other factors, which can be either aggravating or mitigating factors and should be taken into account by the Commissioner or the representative in setting the penalty if, in the interests of justice and public safety, a reduction or an increase in the amount of the assessment is required in order to achieve the purposes of the Act. Other matters might be either positive or negative, such as: cooperation or lack of cooperation; general attitude towards compliance; equities; institution or revision of a safety director or safety consultant; comprehensiveness of corrective action, such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern; compliance or noncompliance by the date set in the notice of claim; speed of compliance; and other matters. These matters, both negative and positive, are to be considered together, and they may cancel out one another.

[OAR Docket #12-720A; filed 5-24-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 50. TABS, TAGS, SIGNS AND INSIGNIAS

[OAR Docket #12-721]

RULEMAKING ACTION:
PERMANENT final adoption.
RULES:
Subchapter 3. Parking Placards for Physically Disabled Persons
595:50-3-2. Physically disabled parking placards [AMENDED]
595:50-3-6. Duplication of physically disabled parking placards; replacement of a lost stolen, or defective physically disabled parking placard [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. §§ 2-108 and15-112(G)
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Amendments to this chapter would clarify the issuance of parking placards for physically disable persons.
The proposed action is to amend existing rule.

The circumstance which created the need for this rule is the need to inform the public of the maximum number of placards an applicant may receive during an issuance period. The limitation of placards will assist in reducing the number of persons abusing physically disabled parking privileges.

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

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

SUBCHAPTER 3. PARKING PLACARDS FOR PHYSICALLY DISABLED PERSONS

595:50-3-2. Physically disabled parking placards

(a) **Issuance of placards.** A physically disabled parking placard will be issued only by the Department of Public Safety. The Department shall only consider an application submitted within sixty (60) days of the date of the physician's signature. The Department shall, upon approval of the application, issue a detachable parking placard to the applicant; provided, the Department may issue two (2) placards at the original time of original issuance upon request of the applicant.

(b) **Types of placards.** The type of placard issued shall be dependent upon the length of disability of the applicant as designated on the application by the physician. Types of placard are as follows:

(1) **Permanent physical disability.**

(A) The placard will be blue and white in color and display the International Symbol of Access and have an expiration date of five (5) years from the date of issuance.

(B) The placard will only be issued to individuals with permanent physical disabilities as certified by a physician.

(C) Each placard shall have a unique identification number.

(2) **Temporary physical disability.**

(A) The placard will be red and white in color, bear the word "TEMPORARY", and display the International Symbol of Access.

(B) The placard will be issued to individuals whose physical disability is not permanent and for the of six (6) months or less as indicated by the physician on the application.

(C) The placard may be renewed, if necessary, by submitting a new application to the Department of Public Safety.

(c) **Display of placard.** The placard shall be displayed:

(1) by hanging it from the rear view mirror of the vehicle, or

(2) if the vehicle is not equipped with a rear view mirror, on the dashboard on the driver's side of the vehicle.

595:50-3-6. Duplication of physically disabled parking placards; replacement of a lost stolen, or defective physically disabled parking placard

(a) A physically disabled parking placard may not be photocopied or duplicated.

(b) Individuals or organizations who report the loss or theft of a physically disabled parking placard may apply in writing to the Department for a replacement placard, which the Department shall issue, upon approval of the request, with the same expiration date as the original placard; provided, the Department of Public Safety shall not issue more than one replacement placard during the term of the original placard.

[OAR Docket #12-721; filed 5-24-12]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 60. AUTHORIZATION TO CARRY CONCEALED FIREARMS

[OAR Docket #12-721A]

RULEMAKING ACTION:
PERMANENT final adoption.

RULES:
595:60-1-1. Purpose [AMENDED]
595:60-1-4. Eligibility [AMENDED]

AUTHORITY:
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ANALYSIS:
Amendments to this chapter would update the eligibility requirements for retired law enforcement officers of the Department of Public Safety to carry concealed firearms as provided in the "Law Enforcement Officers Safety Act Improvements Act of 2010".

The proposed action is to amend existing rule.

The circumstance which created the need for this rule was enactment of S. 1132, "Law Enforcement Officers Safety Act Improvements Act of 2010", Public Law No: 111-272, effective October 12, 2010.

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

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2012:

595:60-1-1. Purpose

The purpose of this chapter is to regulate the authorization for retired law enforcement officers of the Oklahoma Highway Patrol Division, including the former Lake Patrol Division and the former Capitol Patrol Division, of the Department of Public Safety to carry concealed firearms pursuant to the "Law Enforcement Officers Safety Act of 2004", as amended by the "Law Enforcement Officers Safety Act Improvements Act of 2010", also known variously as:

(1) H.R. 218;

(2) Public Law No. 108-277; and

(3) 18 U.S.C., Section 926C.

595:60-1-4. Eligibility

Each retiree wishing to apply for a concealed carry identification card shall meet the following criteria:

(1) have retired in good standing from service with the Department as a law enforcement officer, other than for reasons of mental instability;

(2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(3) have a retirement status of:

(A) at the time of retirement, had been regularly employed as a law enforcement officer with the Department for an aggregate of ~~15~~ten (10) years or more; or

(B) retired from service with the Department, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) has a nonforfeitable right to benefits under the Oklahoma Law Enforcement Retirement System;

(5) during the most recent 12-month period, has met the standards of the Department for training and qualification for an active law enforcement officer to carry firearms;

(6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) is not prohibited by federal law from receiving a firearm because the applicant:

(A) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(B) is a fugitive from justice;

(C) is an unlawful user of or addicted to any controlled substance, as defined in 21 U.S.C., Section 802;

(D) has been adjudicated as a mental defective or has been committed to any mental institution;

(E) who, being an alien:

(i) is illegally or unlawfully in the United States; or

(ii) except as provided in subsection 18 U.S.C., Section 922(y)(2), has been admitted to the United States under a nonimmigrant visa, as defined in 8 U.S.C., Section 1101(a)(26);

(F) has been discharged from the Armed Forces under dishonorable conditions

(G) who, having been a citizen of the United States, has renounced his citizenship;

(H) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that

(i) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(ii) either:

(I) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(II) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(I) has been convicted in any court of a misdemeanor crime of domestic violence.

[OAR Docket #12-721A; filed 5-24-12]

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

[OAR Docket #12-743]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
605:10-1-2. [AMENDED]
605:10-1-3. [AMENDED]
Subchapter 3. Education and Examination Requirements
605:10-3-5. [AMENDED]

605:10-3-7. [AMENDED]
Subchapter 5. Instructor and Entity Requirements and Standards
605:10-5-1. [AMENDED]
605:10-5-1.1. [AMENDED]
605:10-5-2. [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2. [AMENDED]
605:10-7-3. [AMENDED]
605:10-7-4. [AMENDED]
605:10-7-7. [AMENDED]
605:10-7-8. [AMENDED]
605:10-7-8.1. [AMENDED]
605:10-7-8.2. [AMENDED]
605:10-7-8.3. [AMENDED]
605:10-7-8.4. [NEW]
Subchapter 9. Broker's Operational Procedures
605:10-9-1. [AMENDED]
605:10-9-4. [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2. [AMENDED]
605:10-11-3. [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. [AMENDED]
Subchapter 15. Disclosures
605:10-15-3. [AMENDED]
Subchapter 17. Causes for Investigation; Hearing Process; Prohibited Acts; Discipline
605:10-17-4. [AMENDED]
605:10-17-6. [AMENDED]
APPENDIX A. Residential Property Condition Disclosure Statement [REVOKED]
APPENDIX A. Residential Property Condition Disclosure Statement [NEW]

AUTHORITY:
Title 59, Oklahoma Statutes, Section 858-208; Oklahoma Real Estate Commission

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N/A

ANALYSIS:
605:10-1-2. Definitions - Adding that social networking shall be included within the definition of advertising; and defining rents or leases within the definition of a real estate broker.

605:10-1-3. Appeal of administrative decisions; procedures - Adding that any adverse administrative action or decision of a third party contract vendor may be appealed by the adversely affected party.

605:10-3-5. Examinations - Adding a rule that addresses the process in the event an applicant is caught cheating on the real estate examination by the examination contract vendor and the right to appeal the action taken.

605:10-3-7. Provisional sales associate postlicense education requirement - Adding a hyphen between the word postlicense; and adding contracts to the post-license course content.

605:10-5-1. Approval of prelicense course offerings - Adding a hyphen between the word prelicense; and clarifying that an approved entity shall not advertise a course as approved prior to receiving approval from the Commission.

605:10-5-1.1. Approval of postlicense course offerings - Adding hyphen between the word postlicense; clarifying that an approved entity shall not advertise a course as approved prior to receiving approval from the Commission; placing a 7 year retention period on records retained by the post-license entity; and requiring that an entity notify the Commission electronically of licensees who complete the post-license requirement.

605:10-5-2. Approval of continuing education offerings - Deleting some documentation requirements for approval submissions; clarifying than an approved entity shall not advertise a course as approved prior to receiving approval from the Commission; and clarifying that on all in-class presentations the instructor must be present for all of the offering and if such in-class presentation and transmitted electronically to other receiving locations, the receiving locations only have to have an in-class monitor rather than an approved instructor.

605:10-7-2. License terms and fees; renewals; reinstatements - Adding a hyphen between the words prelicense and postlicense; and deleting a paragraph out of this rule and placing it in a more appropriate rule (605:10-7-4).

605:10-7-3. Placement of license on inactive status - Adding language that states if a licensee fails to comply with a request for documentation from the Commission, based on another appropriate statute or rule requirement which affects the license, the Commission shall place the license inactive.

605:10-7-4. Request for activation or re-issuance of license - Rewording language that addresses the process of a licensee renewing on inactive status and thereafter requesting active status within the same license term; and adding language that was deleted from rule 605:10-7-2.

605:10-7-7. Branch offices - Adding clarifying language that documents are required in addition to the fee to license a branch office.

605:10-7-8. Corporation licensing procedures and requirements of good standing -Deleting the reference that a corporation appoint a new broker within 3 working days.

605:10-7-8.1. Partnership licensing procedures and requirements of good standing - Deleting the reference that a partnership appoint a new broker partner within 3 working days.

605:10-7-8.2. Association licensing procedures and requirements of good standing -Deleting the reference that an association appoint a new broker manager within 3 working days.

605:10-7-8.3. Sole Proprietor licensing procedures - Clarifying language in this rule.

605:10-7-8.4. Managing broker, broker proprietor or branch broker's corporation or association formed for the purpose of receiving compensation - Adding a new rule that establishes the process that will allow a managing broker, broker proprietor or branch broker to form an entity (that is not licensed by the Oklahoma Real Estate Commission) and wherein commissions of the broker can be paid for tax purposes.

605:10-9-1. Place of business and broker requirements - Stating that the licenses of those that are licensed do not have to be displayed but rather maintained at the office location and available upon request.

605:10-9-4. Advertising - Clarifying that yard signs must contain the telephone number of the broker.

605:10-11-2. Associate licenses - Deleting an obsolete rule requirement.

605:10-11-3. Associate's corporation or association - Changing the title of the rule and clarifying language throughout the rule.

605:10-13-1. Duty to account; broker - Adding language that requires the broker to ensure that all documents retained by a third party vendor are maintained and able to be retrieved for a 5 year time period; deleting the requirement that a broker maintain two copies of alternative media; adding language that applies to firm mergers and indicating that they have 30 days in which to provide the Commission required documentation; and adding language that addresses a new federal requirement on the security breach of personal information and outlining the process for reporting the incident.

605:10-15-3. Requirements for furnishing psychological factors - Clean up language only.

605:10-17-4. Prohibited dealings - Correcting for the matter of consistency with another law portion [Section 858-353 & 858-354] the requirement that a licensee inform the buyer and seller "in writing" at the time an offer is presented that they will be expected to pay certain closing costs at closing; and adding a prohibited act for failing to maintain documents relating to trust accounts or real estate transactions for the 5 year time period as required by the rules.

605:10-17-6. Requirements for suspended/revoked brokers and associates -Amending the title of this section and throughout the rule to change the wording from "broker and associates" to "licensee"; and deleting unnecessary language.

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT - Adding that "earthquake damage to the property" is now information that should be disclosed on the disclosure form to a potential purchaser of real estate.

CONTACT PERSON:

Anne M. Woody, Executive Director, Oklahoma Real Estate Commission, 1915 North Stiles, Suite 200, Oklahoma City, Oklahoma 73105 405-521-3387

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

605:10-1-2. Definitions

When used in this Chapter, masculine words shall include the feminine and neuter, and the singular includes the plural. The following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication, to include social networking, to consumers for any purpose related to licensed real estate activity.

"Bona fide offer" means an offer in writing.

"Branch office broker" means a person who qualified for a broker license and who is designated by a broker to direct and supervise a branch office on behalf of the broker in conformance with Section 858-310 of the Code. A branch office broker is considered an associate of the broker and a managing broker of the branch office.

"Broker" means a sole proprietor, corporation, managing corporate broker of a corporation, association, managing broker member or manager of an association, partnership, or managing partners of a partnership and shall be one and the same as defined as a broker in Section 858-102 of the Code and whom the Commission shall hold responsible for all actions of associates who are assigned to said broker.

"Code" when used in the rules of this Chapter, means Title 59, Section 858-101 et seq, Oklahoma Statutes as adopted 1974 and amended.

"Entity" means association, corporation and partnership.

"Filed" means the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

"Firm" means a sole proprietor, corporation, association or partnership.

"Inactive status" means a period in which a licensee is prohibited from performing activities which require an active license.

"Nonresident" means a person who is licensed to practice in this state, however, does not maintain a place of business in this state but maintains a place of business in another state and who periodically comes to this state to operate and perform real estate activities.

"Previously licensed applicant" means a person who has been licensed in another state and ~~is desiring~~desires to obtain a resident license in this state.

"Provisional sales associate" shall be synonymous in meaning with sales associate except where it is specifically addressed in Subchapters 3, 5 and 7 of this Chapter.

"Rents or leases real estate" as referenced in Title 59, Section 858-101, subparagraph 2, means the licensed activities provided by a broker through a property management agreement with a consumer for a fee, commission or other valuable consideration, or with the intention or expectation of receiving or collecting a fee, commission or other valuable consideration. Licensed property management activities may include, but shall not be limited to, showing real property for rent or lease; soliciting tenants and landlords; negotiating on behalf of the tenant or landlord; and complying with and maintaining the property in accordance with Title 41, Oklahoma Statutes, Non-Residential/Residential Landlord and Tenant Acts.

"Resident" means a person who is licensed in this state and operates from a place of business in this state.

"Sole proprietor" means a broker who is the sole owner of a real estate business.

"Trade name" means the name a firm is to be known as and which is used in advertising by the firm to promote and generate publicity for the firm. A firm may or may not do business in the name under which their license is issued but must register with the Commission all trade names used by the firm.

605:10-1-3. Appeal of administrative decisions; procedures

(a) Unless specifically provided for elsewhere in this Chapter, any adverse administrative action or decision rendered by the Commission, ~~or~~ its staff on behalf of the Commission~~,~~or a third party contract vendor, may be appealed by the adversely affected party filing within thirty (30) days of notice of such action or decision, a written request for a hearing.

(b) Upon receipt of a request for any non-disciplinary hearing provided for in this Section, or any other rule of this Chapter, the Secretary-Treasurer shall schedule an administrative decision hearing before a Hearing Examiner, a selected panel of the Commission, or the Commission as a whole giving at least fifteen (15) days notice of such hearing. Such hearing shall be public except that upon motion, witnesses, other than the adversely affected appealing party, may be excluded from the hearing room when such witnesses are not testifying. A court reporter shall be present to record the proceedings in behalf of the Commission. Any person desiring a copy of the transcript of the proceedings may purchase such from the reporter.

(c) In the case of a proceeding conducted by the Commission as a whole or a panel of the Commission, the Chairman or his designee shall preside. Designated counsel shall advise the chair as to rulings upon the questions of admissibility of evidence, competence of witnesses and any other question of law where such ruling is required or requested.

(d) The appealing party may present his or her own evidence or may present such through his or her counsel. In order that the hearing will not be encumbered by evidence having no bearing on the issues, testimony by all witnesses will be limited to matters relevant to the issues involved.

(e) The order of procedure shall be as follows:

(1) Recitation of the administrative action or decision.

(2) Presentation of the adversely affected party's appeal.

(3) Questioning of the appealing party by the hearing panel or Hearing Examiner.

(4) Response by the Commission or Commission representatives detailing grounds for and basis for the administrative decision or action.

(5) Examination of witnesses by appealing party with cross-examination of such witnesses.

(6) Closing statements by the appealing party.

(f) If the case is~~be~~ heard by the Commission as a whole, the Commission shall deliberate and render its decision with confirmation of such decision in writing in the form of an Order distributed to all parties by mail.

(g) In the case of a hearing conducted by a Hearing Examiner or a panel of the Commission, following the hearing, the Hearing Examiner or attorney sitting as counsel to the panel of the Commission shall prepare a recommended Order to be considered by the Real Estate Commission as a whole at a future meeting. All parties will be furnished copies of the recommended Order and notified as to the date the recommendations will be considered by the Commission for adoption. At the same time, notice will be given also to the parties that written exceptions or requests to present oral exceptions or arguments, if any, should be submitted on or before a designated date pursuant to Section 311, Title 75, Oklahoma Statutes. Upon adoption of the recommended Order by the Commission as a whole, such Order shall be distributed to all parties.

SUBCHAPTER 3. EDUCATION AND EXAMINATION REQUIREMENTS

605:10-3-5. Examinations

(a) **Applicant must appear in person.** When an application for examination has been submitted to the Commission, the applicant shall be required to appear in person, at a time and place to be designated by the Commission, and answer questions based on the required subject matter as prescribed elsewhere in the rules of this Chapter. On and after August 1, 2001, each broker examination fee shall be Seventy-five Dollars ($75.00) and each provisional sales associate/sales associate examination fee shall be Sixty Dollars ($60.00.)

(b) **Special accommodations.** In cases where special accommodations are necessary under the requirements of the Americans with Disabilities Act, applicants must notify the examination supplier in advance by submitting a written request, on a form prescribed by the Commission, describing the disability and necessary accommodations.

(c) **Failure to pass examination.** If an applicant fails to pass the examination prescribed by the Commission, the Commission may permit subsequent examinations upon receipt of a new examination fee for each examination to be attempted.

(d) **Applicant request to view failed examination.** An applicant who fails the examination has the option of reviewing their missed questions at the end of their examination. An applicant may challenge the validity of any question(s) they identify as incorrectly graded. A challenge to a question that pertains to the Oklahoma law portion of the examination will be sent to the Commission by the examination supplier. A challenge to a question that pertains to the national portion will fall under the review policy of the examination supplier. In either case, both the examination supplier and/or the Commission shall have five (5) business days in which to review and issue a response to the applicant. Applicants will be allowed up to one (1) hour to review their exam and the applicant will not be allowed to test on the same day they review a failed examination. No notes, pencils~~,~~ or electronic devices will be allowed during review nor will they be allowed to leave the examination area with the examination questions.

(e) **Application valid for one year.** The original examination application shall be valid for one (1) year from date of filing. After such date, an applicant must complete a new original application form.

(f) **Passing percentile of examination.** A score of seventy-five percent (75%) or more shall be considered a passing grade on the broker or provisional sales associate/sales associate examination.

(g) **Validity period of examination results.** The results of an examination wherein an applicant scored a passing grade shall be valid for one (1) year from the date of such examination.

(h) **Disciplinary examination fee.** A fee shall be charged for an examination which is directed by Order of the Commission as disciplinary action.

(i) **Examination voided.** A licensee or instructor applicant caught cheating during the course of a real estate examination shall:

(1) immediately forfeit the examination,

(2) be given a failing score,

(3) be disqualified from retaking the examination for one year, and

(4) be allowed to file an appeal with the Commission under Rule 605:10-1-3.

605:10-3-7. Provisional sales associate ~~postlicense~~post-license education requirement

(a) **Purpose.** The purpose of the provisional sales associate ~~postlicense~~post-license education requirement is to provide an educational program through which real estate provisional sales associate licensees can become more competent, knowledgeable and perfect their ability to engage in real estate activities for which they are licensed. Such activities involve facts and concepts ~~about~~ which licensees must be knowledgeable in order to safely and confidently conduct real estate negotiations and transactions in the public's best interest.

(b) **Goals.** The goals of the provisional sales associate ~~postlicense~~post-license education requirements are:

(1) To provide newly licensed individuals with the opportunity to obtain current information and knowledge to enable them to conduct real estate negotiations and transactions in a legal and professional manner in order to better protect public interest.

(2) To assure that licensees are provided with relevant information pertaining to practices which directly relate to real estate business.

(3) To assure that the provisional sales associate is provided with information regarding new and/or changing laws and regulations which affect the real estate business.

(4) To assure that the consumers interest is protected from unknowledgeable licensees.

(c) **Objectives.** The objectives of ~~postlicensing~~post-license education are to:

(1) Assist newly licensed individuals by having available a practical educational program wherein the information attained can be put into practice.

(2) To help licensees expand and enhance their knowledge and expertise so as to continually be effective, competent, and ethical as they practice real estate.

(3) To encourage licensees to gain additional education for specialization in particular areas of real estate.

(d) **Subject content.** On and after July 1, 1993, a provisional sales associate shall be required to successfully complete prior to the first license expiration date, forty-five (45) clock hours of ~~postlicensing~~post-license education or its equivalent as determined by the Commission. Such course of study shall be referred to as the Provisional ~~Postlicense~~Post-License Course of Real Estate, Part II of II and shall encompass the following areas of study:

(1) Real Estate Marketplace
(2) Marketing Real Estate
(3) Personal Marketing
(4) The Qualifying Process
(5) Prospecting and Negotiating
(6) Financing Real Estate, Investments and Exchanges
(7) Financial Documents
(8) Duty to Account
(9) Title Search
(10) Risk Management
(11) Broker Relationships ~~With~~with Parties to a Transaction
(12) Property Management
(13) Laws and Regulations Affecting Real Estate Practice
(14) Disciplinary Action~~.~~
(15) Contracts.

(e) **Equivalent course content.** The Commission may approve and/or accept any offering or combination of offerings which consists of forty-five (45) clock hours or more or its equivalent as determined by the Commission provided by an entity which meets the purposes, goals and objectives of the provisional sales associate ~~postlicense~~post-license education requirement.

(f) **Offerings.**

(1) The Commission may accept the following offerings as proof of meeting the ~~postlicense~~post-license education requirement:

(A) Any offering which is approved and presented by those entities enumerated in Title 59, O.S., subsection B, of 858-307.2 of the "Code."

(B) Any offering in real estate, or directly related area, approved and/or accepted by the real estate regulatory agency in another state; provided such offering is not excluded elsewhere in this Chapter.

(C) Any offering in real estate, or directly related area, not accepted in paragraphs (A) or (B) of this subsection, which can be determined by the Commission to be in compliance with the intent of the rules of this Chapter.

(2) The Commission has the authority to disapprove any offering which fails to meet the purposes, goals and objectives of this Section.

(g) **Licensee responsible for notification to Commission.** Each provisional sales associate shall be responsible to furnish evidence to the Commission of having successfully completed a Commission approved forty-five (45) clock hour ~~postlicense~~post-license education course or its equivalent as determined by the Commission. Upon successful completion of the ~~postlicense~~ post-license education requirement, evidence must be submitted on or before license expiration and on a form approved by the Commission.

(h) **Failure to complete ~~postlicense~~post-license education requirement prior to license expiration.** A provisional sales associate who fails to complete the ~~postlicense~~post-license education requirement prior to the first expiration date of the provisional sales associate license, shall not be entitled to renew such license.

(i) **Evidence of completion.** As evidence of having completed the education requirement, each provisional sales associate shall present one or more of the following as required by the Commission:

(1) A certificate, and/or documents, statements and forms, as may reasonably be required by the Commission, or

(2) A certified transcript; provided, however, if such offering is taken as an accredited C.E.U. (Continuing Education Unit) a certificate may be accepted in lieu of the transcript.

(m) **Attendance and successful completion required for in-class credit.** To complete any in-class offering, a person must physically be present during all of the offering time and successfully complete all course requirements and an examination.

(k) **Successful completion of materials and examination required for distance education credit.** To complete a distance education offering, a person must successfully complete all course requirements to include all modules and an examination.

(l) **Course limitations.** The following course limitations shall apply:

(1) A provisional sales associate shall only be given credit for courses specifically approved by the Commission.

(2) Educational courses taken for disciplinary reasons ~~shall~~do not count towards the normal ~~postlicense~~post-license education requirement.

(m) **Extension of time for completion of ~~postlicense~~post-license course for provisional sales associate ~~who~~that has received orders for active military service.** A provisional sales associate ~~who~~that has received orders for active military service may request an extension of time to complete the ~~postlicense~~post-license education requirement if the request is received in writing prior to the expiration of the license. The request must be accompanied by a copy of the military orders for active military service. The extension of time shall be one (1) year from the date of return from active military service. In conformance with §858-309, a licensee on active military service shall request an inactive status prior to each term for which the license is to be issued. If an extension is approved, a provisional sales associate shall be allowed to renew their license by requesting an inactive status in writing prior to each term for which the license is to be issued.

SUBCHAPTER 5. INSTRUCTOR AND ENTITY REQUIREMENTS AND STANDARDS

605:10-5-1. Approval of ~~prelicense~~pre-license course offerings

(a) **Course approval.** Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-1 and divided by instructional periods, the name, author and publisher of the primary textbook, or a statement stating the entity will use OREC syllabus and other items as may be required by the Commission.

(b) **Course offering requirements.**

(1) An entity not conducting an applicable approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission.~~No~~Further, no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission~~. Such~~although such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor. Each application for approval must be accompanied by a Twenty-Five Dollar ($25.00) application fee and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) A bachelor's degree with a major in real estate from an accredited college or university.

(2) A bachelor's degree from an accredited college or university, and at least two (2) years of applicable active experience within the previous ten (10) years as a real estate broker or sales associate.

(3) A real estate broker or sales associate licensed in Oklahoma with a minimum of five (5) years applicable active experience within the previous ten (10) years as a real estate broker or sales associate and proof of high school education or its GED equivalent.

(4) An individual determined by the Commission to possess a combination of education and/or applicable active broker or sales associate experience in real estate or real estate related fields which constitutes an equivalent of one or more of the qualifications in paragraphs (1), (2), or (3) of this subsection.

(f) **Course content examination.** Final approval will be considered after the instructor applicant has paid the appropriate examination fee and successfully completed an applicable examination with a passing score of 80% or more. If an instructor applicant has successfully taken an applicable license examination with a passing score of 80% or more within thirty (30) days of filing an instructor application, the passing score may be utilized to meet the applicable examination requirement in this section

(g) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

(A) Attend a Commission directed Instructor Renewal Course every eighteen (18) months or successfully complete nationally recognized teacher modules consisting of at least 3 clock hours of credit as approved by the Commission.

(B) Complete one of the following:

(i) Furnish evidence that the instructor has taught a Commission approved ~~prelicense~~pre-license course, or any other real estate related course(s) the Commission determines to be equivalent, within a required thirty-six (36) month period;

(ii) Successfully pass the applicable sales or broker examination with a score of 80% or more; or

(iii) Furnish evidence to the Commission that the instructor has audited an in-class ~~prelicense~~pre-license course, in its entirety, that must be validated by the school instructor or director.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply as an original instructor applicant.

(h) **Guest instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(i) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain enrollment records and roll sheets which include number of hours attempted by each student for seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(5) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(6) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(j) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(k) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Failure of an approved entity to maintain a 50% or better pass/fail ratio on the Commission examinations.

(5) Falsification of records and/or application(s) filed with the Commission.

(6) False and/or misleading advertisement.

(7) Any other improper conduct or activity of the director, instructor, or entity as may be determined by the Commission to be unacceptable.

605:10-5-1.1. Approval of ~~postlicense~~post-license course offerings

(a) **Course approval.** In accordance with Section 858-302 of the License Code, the Commission shall determine and approve the education content of the forty-five (45) clock hour ~~postlicense~~post-license course content or its equivalent. Any person or entity seeking to conduct an approved course of study shall make application and submit documents, statements and forms as may reasonably be required by the Commission. The request shall include the following:

(1) Completed course application.

(2) Application fee of One Hundred Twenty-five Dollars ($125.00) for each course.

(3) An approved course syllabus encompassing the contents enumerated in 605:10-3-7 and divided by instructional periods, with the name, author and publisher of the primary textbook.

(b) **Course offering requirements.**

(1) An offering entity not conducting the approved course within any thirty-six (36) month period shall automatically be removed from approved status. In such event, the person and/or entity must re-apply as an original applicant.

(2) If a course of study is to be conducted in the name of a corporation, the application shall include the names and addresses of all directors and officers.

(3) An approved entity shall immediately report any changes in information in regards to the application previously filed with the Commission.

(c) **Denied applications.** No portion of the fees enumerated in this Section are refundable. If an instructor, entity or course application is not approved, the applicant may appeal the decision by filing a written request for a hearing before the Commission. The hearing procedure shall be that as outlined in 605:10-1-3 titled "Appeal of administrative decisions; procedures."

(d) **Advertising course offerings.** No person or entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission.~~No~~Further, no person or entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission~~. Such~~although such person or entity may indicate that a course of study has been approved by the Commission.

(e) **Instructor application and approval requirements.** An individual determined by the Commission to possess one or more of the following qualifications may be considered for approval as an instructor upon receipt of an application and evidence of education and/or experience. Each application must be accompanied by a One Hundred Dollar ($100.00) application fee, and documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction at the entity.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitutes an equivalent to one or more of the qualifications in (1), (2) or (3) of subsection (e) of this Section.

(f) **Instructor renewal requirements.**

(1) In order to maintain approved status, an instructor must comply with the following:

~~(A)~~ Attend a Commission directed Instructor Renewal Course, or its equivalent, every eighteen (18) months. An exception to this rule may be given by the Commission is such instructor is licensed or certified through another regulatory body.

~~(B)~~ Instructors approved solely for distance education offerings must complete three (3) hours every twelve (12) months of instructor training as accepted by the Commission and sign a statement that changes to current law and rules have been reviewed and that the instructor has made applicable amendments to the course material.

(2) Any instructor not meeting the requirements of this subsection will be required to re-apply and an original instructor applicant.

(g) **Guest instructors.** Guest instructors may be utilized provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

(h) **Instructor and entity requirements.**

(1) **Instructor must be present.** An approved instructor must be present in the same room during all course instruction for students to receive credit toward course completion.

(2) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student for a period of seven (7) years.

(3) **Course completion certificate.** Each individual successfully completing a course of study approved by the Commission shall be furnished a certificate prescribed or approved by the Commission certifying completion. The Commission shall accept from a college or university a certified transcript or a course completion certificate as prescribed by the Commission.

(4) **Course notification to Commission.** An entity conducting an approved post-license education offering shall, within five (5) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed said offering. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(~~4~~5) **Commission authorized to audit and inspect records.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(~~5~~6) **Clock hours and breaks.** Not more than one clock hour may be registered within any one sixty (60) minute period and no more than ten (10) minutes of each hour shall be utilized for breaks.

(~~6~~7) **Class size limited.** Instructor ratio to students shall not exceed sixty (60).

(i) **Facility approval requirements.** Before an approved course offering can be presented at a location, the person or group presenting the course must seek approval of the facility to be used for presentation of the course. A Commission approved application must be completed and accompanied by a Seventy-five Dollar ($75.00) application fee.

(1) The application fee may be waived if the facility request for approval has been approved for use as a classroom by the State Department of Education, State Regents of Higher Education, or State Vocational and Technical Education.

(2) The application fee may be waived if an entity is requesting to utilize a facility that is currently approved by the Commission as an active facility site.

(3) The Commission shall act on a facility application within thirty (30) days of receipt of application.

(j) **Disciplinary action.** An approved course of study, director, instructor and/or facility may be withdrawn or disciplined as outlined in Title 59, O.S., Section 858-208, paragraph 6 either on a complaint filed by an interested person or the Commission's own motion, for the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of a director is suspended or revoked, the course of study shall automatically be revoked.

(2) In the event the real estate license of an instructor is suspended or revoked.

(3) Failure to comply with any portion of the Code or the rules of this Chapter.

(4) Falsification of records and/or application(s) filed with the Commission.

(5) False and/or misleading advertisement.

(6) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

605:10-5-2. Approval of continuing education offerings

(a) **Approval and expiration of application.** An entity seeking to conduct an approved continuing education offering shall make application for the approval or renewal of each offering. Such approval or renewal shall expire at the end of the twenty-fourth (24) month including the month of issuance.

(b) **Application form.** Each application by a sponsoring entity for approval of an offering or group of offerings not exceeding thirty-six (36) hours covered by the same application must be accompanied by a non-refundable Seventy Dollar ($70.00) application fee. Such application shall be made on a form prescribed by the Commission. The application shall include, but not limited to, the following information:

(1) The name(s), address(es), and telephone number(s) of the sponsoring entity, the owner(s), and the coordinator/director responsible for the quality of the offering.

(2) The title(s) of the course offering or offerings.

(3) The number of hours in each course offering.

~~(4) The tuition/registration fee and cancellation/refund policy.~~

(~~5~~4) A copy of each offering's curriculum, or revised curriculum with revisions noted, including comprehensive course objectives, a legible detailed outline of the course subject matter and instructor(s) for each segment.

(~~6~~5) The method of evaluation of the course offering which will be used by the entity.

(~~7~~6) The procedure for monitoring attendance.

(~~8~~7) A personal resume indicating name(s) and qualifications of the instructor(s).

~~(9) The number of years the entity has been offering real estate related education.~~

(~~10~~8) Any other relevant information useful in determining that the entity is presenting an offering which will meet the definition, purposes, goals and objectives adopted by the Commission.

(~~11~~9) A statement attesting to the fact that in accepting approval as a continuing education offering entity, the entity will protect and promote the purposes, goals and objectives of continuing education as stated in the License Code and Rules.

(c) **Commission course approval notice.** The Commission shall within sixty (60) days after receipt of an application inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering.

(d) **Course renewal requirements.** An application for renewal of any offering or group of offerings by an entity shall also be accompanied by a non-refundable application fee of Seventy Dollar ($70.00) for a twenty-four (24) month period. Renewal applications shall be subject to the same requirements as original applications.

(e) **Change of information notice requirement.** Whenever there is any change in an offering, the entity shall notify the Commission prior to the effective date of the change. Such change shall not be considered approved until written notice is received from the Commission.

(f) **Advertising of course offering.** An entity advertising an offering as being approved for continuing education credit shall state in such advertisement, "Approved by the Commission for (correct number) hours of continuing education credit." No entity sponsoring or conducting a course of study shall advertise the course as approved prior to the course receiving approval from the Commission.Further, no entity sponsoring or conducting a course of study shall advertise that it is endorsed, recommended or accredited by the Commission.

(g) **Course requirements and limitations.**

(1) An offering approved pursuant to this Section shall be open to all licensees, except as may otherwise be approved by the Commission upon request of the offering entity.

(2) An offering will not be approved by the Commission if its duration is less than two (2) consecutive clock hours or its equivalent as determined by the Commission.

(3) To meet the statutory requirement, a clock hour shall equal sixty (60) minutes, with no more than ten minutes of each hour utilized for breaks.

(4) An entity conducting an approved continuing education offering shall, within five (5) days of the completion thereof, successfully submit to the Commission the list of name(s), license number(s) and other personal identifiers of those licensees who have successfully completed said offering. The information shall be submitted to the Commission by way of electronic format as required by the Commission, along with other information which may reasonably be required.

(5) Each licensee successfully completing an offering shall be furnished a certificate, prescribed or approved by the Commission, certifying completion.

(6) Each offering shall be presented in a facility necessary to properly present the course as determined by the Commission.

(7) An approved instructor must be present in the same room during all in-class course instruction for students to receive credit toward course completion. If an instructor is presenting a Commission approved in-class course offering which is delivered to the licensees by way of ~~television~~electronic means to receiving sites other than where the instructor is presenting, the Commission may require that each ~~delivering~~ receiving entity site have ~~a~~an in-class person monitoring the class~~monitor~~ in lieu of a Commission approved instructor.

(h) **Recruitment disallowed.**

(1) A coordinator/director or instructor shall not allow the premises or the facilities to be used by anyone to advertise and/or recruit new affiliates for any firm. The coordinator/director shall cause the following statement to be posted at the premises or the facilities in such a manner as will be readable by all participants: "No recruiting for employment opportunities for any real estate brokerage firm is allowed in this class or on the premises. Any recruiting on behalf of, or permitted by, the Instructor should be promptly reported to the Oklahoma Real Estate Commission."

(2) An instructor shall not wear any identification relating to a specific name or identity of a real estate firm, a group of companies or franchises while in the class or on the premises.

(i) **Instructor application and approval requirements~~:~~** An individual may, upon receipt of an application and evidence of education and/or experience, be considered for approval as an approved instructor for a three (3) year period including the month of approval. Each application for approval must be accompanied by a Ten Dollar ($10.00) application fee. In order to qualify, an individual must possess proof of one of the following:

(1) Possession of a bachelor's degree in a related field.

(2) Possession of a valid teaching credential or certificate from Oklahoma or another jurisdiction authorizing the holder to instruct in an applicable field of instruction.

(3) Five (5) years full-time experience out of the previous ten (10) years in a profession, trade, or technical occupation in the applicable field of instruction.

(4) An individual determined by the Commission to possess a combination of education and/or experience, in a field related to that in which the person is to instruct, which constitute an equivalent to one or more of the qualifications in (1), (2) or (3) of this subsection.

(j) **Denied application; appeal.** If the Commission is of the opinion that a proposed continuing education offering does not qualify under the Code and/or Rules of the Commission, the Commission shall refuse to approve the offering and shall give notice of that fact to the party applying for approval within fifteen (15) days after its decision. Upon written request from the denied party, filed within thirty (30) days after receipt of the notice of denial, the Commission shall set the matter for hearing to be conducted within sixty (60) days after receipt of the request. The hearing procedure shall be that as outlined in 605:10-1-3, titled "Appeal of administrative decisions; procedures."

(k) **Disciplinary action.** The Commission may withdraw or discipline as outlined in Title 59, O.S., Section 858-208, paragraph 6 the approval of a coordinator/director, instructor, offering or entity either on a complaint filed by an interested person or on the Commission's own motion, for any of the following reasons, but only after a hearing before the Commission and/or a Hearing Examiner appointed by the Commission:

(1) In the event the real estate license of an instructor and/or coordinator/director is revoked or suspended.

(2) Failure to submit all documents, statements and forms as may be reasonably required by the Commission.

(3) Falsification of records and/or applications filed with the Commission.

(4) False and/or misleading advertising.

(5) Failure to revise an offering so as to reflect and present current real estate practices, knowledge, and laws.

(6) Failure to maintain proper classroom order and decorum.

(7) Any conduct which gives the coordinator/director, instructor or entity presenting the offering an unfair advantage over other brokers and/or real estate companies.

(8) Failure to comply with any portion of the Code or rules of this Chapter.

(9) Any other improper conduct or activity of the director, instructor, or entity the Commission determines to be unacceptable.

(l) **Retention of records.** An instructor/entity shall maintain a record of enrollment records and roll sheets which include number of hours attempted by each student for seven (7) years.

(m) **Commission authorized to audit.** A duly authorized designee of the Commission may audit any offering and/or inspect the records of the entity at any time during its presentation or during reasonable office hours or the entity may be required to provide the records to the Commission.

(n) **Licensee/Instructor course credit.**

(1) A licensee who is the instructor of an approved offering for continuing education shall be credited with one (1) hour for each hour of actual instruction performed.

(2) An instructor may not receive continuing education credit for instructing an offering more than one time during a license term.

(3) Records of such instruction shall be reported and maintained in the same manner as prescribed for participants elsewhere in the rules of this Chapter.

(o) **Guest Instructors.** Guest instructors may be utilized for in-class instruction provided an approved instructor is also present during presentations. Total guest instruction and lectures shall not consume more than thirty percent (30%) of the total course time.

SUBCHAPTER 7. LICENSING PROCEDURES AND OPTIONS

605:10-7-2. License terms and fees; renewals; reinstatements

(a) **License term and fees.** Each original license issued under the Code on and after July 1, 1981, shall be issued to expire at the end of the thirty-sixth (36) month including the month of issuance. Each original provisional sales associate license issued under the Code on and after August 1, 2001, shall be issued to expire at the end of the twelfth (12th) month including the month of issuance. On and after August 1, 2001:

(1) For an original broker license and each subsequent license renewal, to include corporations, associations or partnerships, the fee shall be Two Hundred and Ten Dollars ($210.00).

(2) For an inactive original broker license and each subsequent inactive license renewal, with the exception of corporations, associations or partnerships, the fee shall be One Hundred and Twenty-five Dollars ($125.00). In order to activate such license that was renewed inactive in the same license term, the licensee shall pay One Hundred and Thirty Dollars ($130.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(3) For an active original sales associate license and each subsequent active license renewal the fee shall be One Hundred and Fifty Dollars ($150.00).

(4) For an inactive original sales associate license and each subsequent inactive license renewal the fee shall be Ninety-five Dollars ($95.00). In order to activate a sales associate license that was renewed inactive in the same license term, the licensee shall pay One Hundred Dollars ($100.00). Thereafter, any future request to activate in the same license term shall be in accordance with Rule 605:10-7-4.

(5) For a non-renewable original provisional sales associate license the fee shall be Seventy Dollars ($70.00).

(6) For an original branch office license and each subsequent license renewal the fee shall be One Hundred and Twenty-five Dollars ($125.00).

(7) For each duplicate license or pocket card, where the original license is lost or destroyed, and a written request is made, a fee of Seven Dollars and fifty cents ($7.50) shall be charged.

(8) The Fifteen Dollar ($15.00) Education and Recovery Fund fee shall be added and payable with the license fee for an original license and for each subsequent license. Exceptions to this rule are: 1) a provisional sales associate license fee shall be Five Dollars ($5.00) for their twelve (12) month license term; and 2) a branch office shall not pay the fee.

(b) **Terms cannot be altered.** Terms shall not be altered except for purposes of general reassignment of terms which might be necessitated for the purpose of maintaining an equitable staggered license term system.

(c) **Expiration date.** The actual expiration date of a license shall be midnight of the last day of the month of the designated license term. A person who allows their license to expire shall be considered an applicant and subject to a national criminal history record check, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes.

(d) **Late penalty.** All renewals shall be filed on or before midnight of the tenth day of the month in which said license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date for all renewals except electronic online renewals wherein this exception would not apply. Any such renewal application filed after such date shall be subject to a late penalty fee of Ten Dollars ($10.00).

(e) **Actual filing of license renewal.** A license shall lapse and terminate if a renewal application and required fees have not been filed with the Commission by midnight of the date on which the license is due to expire, except in the event that date falls on a Saturday, Sunday or holiday; in such case, the next Commission working day shall be considered the due date. A renewal application and required fees are considered filed with the Commission on the date of the United States postal service postmark or the date personal delivery is made to the Commission office.

(f) **Reinstatement of license.** Any licensee whose license term has expired shall be considered for reinstatement of such license upon payment of an amount equal to the current examination fee in addition to the license and late penalty fee(s) for each delinquent license period(s). The following documents and fees must be submitted:

(1) **Lapsed less than one year.** In the case of a license lapsed less than one year:

(A) License and late penalty fee.
(B) Reinstatement fee.
(C) National criminal history check.
(D) Documents as required by the Commission.

(2) **Lapsed more than one year but less than two years.** In the case of a license lapsed more than one year but less than two years.

(A) License and late penalty fee.
(B) Reinstatement fee.
(C) National criminal history check.
(D) A completed reinstatement application.
(E) A statement that the applicant has read a current License Code and Rules booklet.
~~(F) If applicable, a statement as to why the license fee was not paid in a timely manner.~~
(~~G~~F) Documents as required by the Commission.

(3) **Lapsed more than two years.** In the case of a license lapsed more than two years.

(A) License and late penalty fee(s).
(B) Reinstatement fee(s).
(C) National criminal history check.
(D) A completed reinstatement application.
(E) Successful completion of the appropriate licensing examination.
(F) Documents as required by the Commission.

(4) **Lapsed more than five years.** If an application is submitted more than five (5) years subsequent to the most recent year of licensure, the applicant shall be regarded as an original applicant.

(5) **May apply as an original if lapsed more than two years.** In the case of a license lapsed more than two (2) years but less than five (5) years, the applicant may at his or her option apply as an original applicant provided evidence is submitted to show that the applicant has successfully completed the appropriate ~~prelicense~~pre-license course(s). A person who does not possess a valid license may be considered for re-license only through the provision for reinstatement unless such license has been lapsed more than two (2) years. In the case of a provisional sales associate, the applicant would be required to repeat and successfully complete the ~~postlicense~~post-license requirement. If this option is elected by a previously licensed sales associate, the sales associate shall be regarded as an original applicant.

(g) **Reinstatement of a provisional sales associate license wherein ~~postlicense~~post-license education was completed prior to license expiration date.** On and after June 1, 1996, an applicant who successfully completed the ~~postlicense~~post-license education requirement before their first license expiration date and failed to renew their license on or before such date shall be eligible to reinstate the license as a sales associate according to 605:10-7-2 (f), (1) through (5).

(h) **Reinstatement of a provisional sales associate license wherein ~~postlicense~~post-license education was not completed prior to license expiration date.** On and after June 1, 1996, an applicant who has not successfully completed the ~~postlicense educational~~post-license education requirement prior to the first license expiration date shall not be eligible to reinstate such license and shall apply and qualify as an original applicant.

(i) **Reinstatement of revoked license.** An applicant may not apply for re-license or reinstatement of license for a minimum of three (3) years from the effective date of license revocation, except for an applicant whose license was automatically revoked pursuant to Sections 858-402 or 858-604 of Title 59, Oklahoma Statutes. Upon the passage of the three (3) year period, the applicant shall be required to comply with the requirements of an original applicant.

(j) **Reinstatement of an automatically revoked license.** An applicant who has had their license automatically revoked, pursuant to Section 858-402 or 858-604 of Title 59 of the Oklahoma Statutes, shall be required to comply with the requirements of (f) of this Section. In addition, reinstatement will not be granted until all outstanding amounts due the Commission have been paid in full.

(k) **Reinstatement of a surrendered or cancelled license.** A surrendered or cancelled applicant may be reinstated provided the applicant has received approval for re-issuance from the Commission. The following forms and fees must be submitted:

(1) **Reinstatement with term of license still current.** A surrendered or cancelled applicant whose license term is still current:

(A) Applicable reinstatement fee.

(B) Re-issuance fee.

(C) Documents as required by the Commission.

(2) **Reinstatement with term of license expired.** A surrendered or cancelled applicant whose license term has expired shall be required to comply with the requirements of (f) of this Section.

(3) **Reinstatement of provisional sales associate with term of license expired.** A surrendered or cancelled provisional sales associate whose license term has expired shall be required to comply with the following:

(A) If a provisional sales associate completed the ~~postlicensing~~post-license requirement on or before the first license expiration date, the applicant shall be eligible to reinstate the license according to 605:10-7-2 (f), (1) through (5).

(B) If a provisional sales associate did not complete the ~~postlicensing~~post-license requirement on or before the first license expiration date, the applicant shall be required to apply and qualify as an original applicant.

(l) **Continuing education requirement.** On and after July 1, 1984, each licensee with the exception of those as listed in Title 59, O.S., Section 858-307.2 (D) seeking renewal of a license must submit evidence that he or she has completed the continuing education requirements enumerated in Section 858-307.2 of Title 59. Further, on and after July 1, 1984, an applicant seeking active reinstatement of a lapsed license must submit evidence that he or she has completed continuing education requirements. The applicant must meet the continuing education requirement for each term in which an active license is requested.

(m) **Sales to broker license fee prorated.** If a real estate sales associate or provisional sales associate shall qualify for a license as a real estate broker, the unused license fee shall be credited to the broker license fee. The unused license fee credit shall commence with the first full month following the month in which the broker license is to be issued.

(n) **License expires after effective date of national criminal history check.**

(1) Any licensee who allows their license to expire after January 1, 2008, shall be required to submit to a national criminal history check; however, such individual shall be allowed to proceed with reinstatement of such license pending receipt by the Commission of a completed fingerprint card, application Part A, and fee as stated elsewhere in these rules for the background search. If~~,~~ the Commission does not receive a completed Part A of the application~~,~~and completed finger print card and fee within thirty (30) days from the date of request of the Commission, the license will be placed inactive and a hold placed on the license until receipt by the Commission of the aforementioned items. Thereafter, upon receipt by the Commission, the license may be reactivated so long as appropriate reactivation forms and fees, as stated elsewhere in these rules, have been received by the Commission.

(2) A ~~Provisional Sales Associate~~provisional sales associate who completes the Provisional Post-License Course prior to their first license expiration date but fails to timely renew ~~and/or complete the post-licensing education requirement~~the license shall be eligible to apply

under the requirement under the preceding paragraph. However, after a period of five (5) years from the date of the license expiration such applicant shall no longer be eligible to apply under this section.

(o) **Issuance of license from provisional sales associate to sales associate if licensed on and after August 1, 2001.** A provisional sales associate is required to furnish to the Commission evidence of successful completion of the Provisional ~~Postlicense~~Post-License Course of Real Estate, Part II of II education requirement as set forth in Section 858-302 of Title 59, of the Oklahoma Statutes. Upon successful completion of the Provisional ~~Postlicense~~Post-License Course of Real Estate, Part II of II education requirement, the provisional sales associate must submit the appropriate document(s) to the Commission prior to the provisional sales associate's license expiration date for issuance of a renewable sales associate license. The Commission shall not issue the provisional sales associate a renewable sales associate license until the end of the provisional sales associate's license term and until the provisional sales associate has submitted evidence of successful completion of the forty-five (45) clock hour ~~postlicense~~post-license course requirement and submitted all required form(s) and fee(s) as required by the Commission.

~~(p) **Active status requested, however, Commission unable to activate for reasons as stated in statutes elsewhere.** In the event a licensee requests an active original license or subsequent license renewal to be issued on active status and for reasons beyond the Commission's control the licensee is unable to obtain an active license at that time, the fees as received by the Commission shall be retained and not refunded. Once the licensee corrects the problem with the appropriate regulatory agency and such agency authorizes the issuance of an active license, the Commission will then, upon receipt of an activation fee and required documentation, issue an active license.~~

(~~q~~p) **Active sales associate to inactive broker license - no remaining credit to be given.** On and after August 1, 2001, in the event an active sales associate within six (6) months of obtaining their original license, reinstatement or license renewal qualifies for an inactive broker license, the Commission shall not refund the difference in the license fees.

605:10-7-3. Placement of license on inactive status

In conformance with Section 858-309 of the Code a licensee who at any time fails to comply with all Code and Rule requirements for active license status shall be placed on inactive status. If a licensee fails to comply with a request for documentation from the Commission, based on another appropriate statutory or rule requirement which affects the license, the Commission shall place the license inactive. At any time the licensee complies with all ~~Code and Rule~~requested requirements ~~for licensing~~, ~~such~~the license shall be issued on active status.

605:10-7-4. Request for activation or re-issuance of license

(a) **Requirements.** All requests for activation or re-issuance of a license must be accompanied by the appropriate documents and fee of Twenty-five Dollars ($25.00) as required by the Commission. ~~Due to the passage of rules which allow an applicant or licensee to originally issue or renew their license at a reduced inactive rate, in the event a licensee requests the Commission to activate a license that was originally issued or renewed inactive on and after August 1, 2001, the licensee shall be required to pay the applicable~~Upon activation of an inactive license wherein the licensee paid the reduced inactive license fee rate, the licensee shall be required to pay the remaining active license fee as outlined in 605:10-7-2.

(b) **Multiple change requests on same license.** In the event a licensee's request involves more than one change to the license at the same time, and each individual change requires a separate fee elsewhere in the rules of this Chapter, the Commission shall only require that one fee be charged to reissue the license if the request is done in a timely manner.

(c) **Continuing education required for activation.** A licensee requesting activation of a license must have complied with the continuing education requirement as set forth in Section 858-307.2 of Title 59 of the Oklahoma Statutes and rule 605:10-3-6. Further, upon a licensee's request for activation being completed and processed, the licensee shall then be required to complete the continuing education requirement for the next license term for which the license is to be renewed active or activated.

(d) **Active status requested, however, Commission unable to activate for reasons as stated in statutes elsewhere.** In the event a licensee requests an active original license, subsequent license renewal, or activation to be issued on active status and for reasons beyond the Commission's control the licensee is unable to obtain an active license at that time, the fees as received by the Commission shall be retained and not refunded. Once the licensee corrects the problem with the appropriate regulatory agency and such agency authorizes the issuance of an active license, the Commission will then, upon receipt of an activation fee and required documentation, issue an active license.

605:10-7-7. Branch offices

(a) **Each additional office must be licensed.** If a broker desires to do business from more than one office location, the broker must license each additional office location~~must be licensed~~ as a branch office ~~upon the payment of a branch office license fee~~by submitting forms and fees as required by the Commission. The license shall be ~~displayed~~maintained in the branch office and available upon request.

(b) **Associate's license issued to branch office.** An associate's license shall be issued to and ~~displayed~~maintained in the office to which the associate is assigned.

(c) **Broker to designate a branch office broker to act.** A broker shall designate a branch office broker, other than himself or herself, to act as broker for each location, to supervise the activities of the branch office. The branch office shall be licensed in conformance with Section 858-310 of the Code. The branch office broker may be designated to perform all duties and sign documents in behalf of the broker with respect to his or her Branch Office at the discretion of the broker. Such

designation shall be in writing and filed with the Commission. The branch office broker assumes the responsibility in conjunction with the broker, for all associates assigned to the branch office.

(d) **Broker may act as branch office broker; restriction.** A broker may act as the branch office broker if the branch office is located at the same location as the main office upon the appropriate documents and fees being filed with the Commission.

(e) **Reappointment of branch office broker.** In the event of the death, disability, retirement or cessation of employment for any reason by the designated branch office broker, and the branch office is to continue business, the main office broker shall appoint a new branch office broker and file the appropriate documents with the Commission within ten (10) days of the occurrence of the event.

(f) **Branch office must utilize the same name or trade name of main office.** A branch office may utilize a name or trade name which is different than the main office only if the branch office also utilizes, for identification and connection purposes, the name or trade name of the main office.

605:10-7-8. Corporation licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each corporation who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the corporation shall be granted a real estate broker license. In order to obtain a license, the corporation shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the corporation is authorized to transact business as a corporation in the State of Oklahoma and that the corporation is in good standing in the State of Oklahoma.

(3) Corporation must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code".

(4) Corporation must have a managing corporate broker who holds a separate license as a real estate broker.

(5) The designation of a managing corporate broker shall be established by sworn statement signed by the President of the corporation stating the date and place such action was effected.

(6) In the event of the death, disability, retirement or cessation of employment for any reason of the managing corporate broker, the corporation shall be required to appoint a new managing corporate broker ~~within three (3) working days of the occurrence of such event,~~ and such notice of change must be filed in the Commission office no later than five (5) working days of the occurrence of the event. The notice of change in a managing corporate broker must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar ($25.00) change of status fee.

(7) The corporation is to notify the Commission in writing within ten (10) days of the date of a change in corporate officers.

(b) **Corporation and managing corporate broker responsible for acts.** The managing corporate broker in conjunction with the corporation is responsible for all acts of the corporation, including the acts of all associates associated with the corporation.

(c) **Corporation closing requirements or partial ceasing of real estate activities.** When a corporation discontinues a portion of real estate activities or ceases all real estate activities, the corporation is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents
except for the issuance of the licenses.

605:10-7-8.1. Partnership licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each partnership who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the partnership shall be granted a real estate broker license. In order to obtain a license, the partnership shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) A written statement signed by all partners attesting to the formation of a partnership and that it is in good standing in the State of Oklahoma.

(3) Partnership must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code".

(4) Partnership must have a minimum of two managing partners who each hold a separate license as a real estate broker.

(5) The designation of the managing partners shall be established by sworn statement signed by the managing partners of the partnership stating the date and place such action was effected.

(6) In the event of the death, disability, retirement or cessation of employment for any reason of the managing partner(s), the partnership is dissolved unless the partnership agreement provides otherwise. If the partnership agreement provides for the continuation of the partnership after the loss of a partner, the partnership shall be required to appoint a new managing partner ~~within three (3) working days of the occurrence of such event,~~ and such notice of change must be filed in the Commission office no later than five (5) working days of the occurrence of the event. The notice of change in managing partners must be accompanied by the appropriate documents as

required by the Commission and a Twenty-five Dollars ($25.00) change of status fee.

(b) **Partnership and managing partners responsible for acts.** The managing partners in conjunction with the partnership are responsible for all acts of the partnership, including the acts of all associates associated with the partnership. If a corporation or association is a partner of the partnership a letter must be submitted by the firm acknowledging that the managing member of the association or managing broker of the corporation is responsible for all acts of the partnership, including the acts of all associates associated with the partnership.

(c) **Partnership closing requirements or partial ceasing of real estate activities.** When a partnership discontinues a portion of the real estate activities or ceases all real estate activities, the partnership is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

605:10-7-8.2. Association licensing procedures and requirements of good standing

(a) **Broker license requirement.** Each association who performs activities which require a real estate license pursuant to Title 59, O.S., Section 858-102 of the License "Code" shall apply as a real estate broker. Upon approval by the Commission, the association shall be granted a real estate broker license. In order to obtain a license, the association shall furnish to the satisfaction of the Commission, but not limited to, the following items:

(1) Completed application form(s) and required fee(s).

(2) Verification that the association is authorized to transact business as ~~a~~an association in the State of Oklahoma and that the association is in good standing in the State of Oklahoma.

(3) Association must be in compliance with Title 59, O.S., Section 858-312.1 of the License "Code".

(4) Association must have a managing member or manager who holds a separate license as a real estate broker.

(5) The designation of a managing broker member or manager shall be established by sworn statement signed by an authorized member or manager of the association stating the date and place such action was effected.

(6) In the event of the death, disability, retirement or cessation of employment for any reason of the managing broker member or manager, the association shall be required to appoint a new managing broker member or manager ~~within three (3) working days of the occurrence of such event,~~ and such notice of change must be filed in the Commission office no later than five (5) working days of the occurrence of the event. The notice of change in a managing broker member or manager must be accompanied by the appropriate documents as required by the Commission and a Twenty-five Dollar ($25.00) change of status fee.

(b) **Association and managing broker member or manager responsible for acts.** The managing broker member or manager in conjunction with the association is responsible for all acts of the association, including the acts of all associates associated with the association.

(c) **Association closing requirements or partial ceasing of real estate activities.** When an association discontinues a portion of the real estate activities or ceases all real estate activities, the association is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(d) **Limited liability company.** A limited liability company shall be considered as an association.

(e) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

605:10-7-8.3. Sole Proprietor licensing procedures

(a) **Sole Proprietor.** A sole proprietor is a broker ~~who~~that is the sole owner of a real estate business/firm. To qualify for a sole proprietorship, the firm shall not conduct business in the name of an entity, i.e., corporation, association (Limited Liability Company) or partnership and the business/firm shall not be owned by any other person or entity. To apply as sole proprietor one must ~~qualify~~meet all requirements for a broker license and submit to the Commission the following:

(1) Completed sole proprietor broker application form(s) and ~~required~~ fee(s) as required by the Commission.

(2) An associate release form if ~~terminating the association as a broker associate~~ previously associated with a sponsoring broker. ~~If upgrading a license from a sales associate or obtaining an initial broker's license, submit the required application form(s) and fee(s) for qualifying for a broker's license as required by the Commission.~~

(b) **Death, disability or retirement.** In the event of the death, disability or retirement of the sole proprietor, the sole proprietor firm shall cease business activities.

(c) **Broker responsible.** A sole proprietor broker is responsible for all acts of associates licensed with the firm.

(d) **Ceasing business activities.** When the sole proprietor discontinues a portion of the real estate activities or ceases all real estate activities, the sole proprietor is required to comply with the following:

(1) Immediately notify the Commission.

(2) Comply with Section 605:10-13-1 (n).

(e) **Group change information.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be issued. To qualify, such request must be received complete and require no further

correspondence and/or documents except for the issuance of the licenses.

605:10-7-8.4. Managing broker, broker proprietor or branch broker's corporation or association formed for the purpose of receiving compensation

Within the meaning of subsection 14 of Section 858-312 of the "Code" payment of a commission by a broker to a managing broker's, broker proprietor's or branch broker's corporation or association does not constitute a payment of a fee (commission) to an unlicensed person provided the corporation or association and the managing broker, broker proprietor or branch broker abide by the following requirements:

(1) The corporation or association shall not perform any act requiring a real estate license and shall not hold itself out as engaged in such activity.

(2) The managing broker, broker proprietor or branch broker must have an active individual real estate license.

(3) The broker of the branch broker must provide to the Commission a written statement approving of the branch broker's corporation or association.

(4) The managing broker, broker proprietor or branch broker must be the majority stockholder and president of the corporation or majority member of the association.

(5) Ownership of a managing broker's, broker proprietor's or branch broker's corporation or association is limited to spouses and blood relatives.

(6) The corporation or association shall not advertise nor receive referral fees or commissions except from the broker.

(7) The managing broker, broker proprietor or branch broker must file a written statement with the Commission including the following:

(A) A statement that the managing broker, broker proprietor or branch broker is the majority stockholder and president of the corporation or majority member of the association.

(B) Names and relation of all officers/members and/or stockholders.

(C) Verification that the association or corporation is in good standing with the Oklahoma Secretary of State.

SUBCHAPTER 9. BROKER'S OPERATIONAL PROCEDURES

605:10-9-1. Place of business and broker requirements

(a) **Place of Business.** Each broker shall maintain a specific place of business, and supervise a brokerage practice which is available to the public during reasonable business hours. Each broker shall be available to manage and supervise such brokerage practice and comply with the following:

(1) The broker's license, as well as those of all licensees associated with the broker, must be ~~prominently displayed~~maintained in ~~such~~the place of business as registered with the Commission and available upon request.

(2) The place of business shall consist of at least one enclosed room or building of stationary construction wherein negotiations and closing of real estate transactions of others may be conducted and carried on with privacy and wherein the broker's books, records and files pertaining to real estate transactions of others are maintained.

(3) Each broker shall register for each place of business a physical address and office telephone number.

(b) **Branch offices.** If a broker maintains one or more places of business, the additional places of business shall be referred to as a branch office. Each associate's license shall be issued to and ~~displayed~~available upon request in the office to which the associate is assigned whether that be the main place of business or branch office.

(c) **Office located at residence.** The office may be in the residence of the broker.

(d) **Associates not permitted to have an office.** Associates are not permitted to have a place of business, but must be registered with a place of business maintained and registered in the name of the broker.

(e) **Licenses issued to place of business.** All licenses will be issued to the street address of the place of business, unless the United States postal service refuses to deliver mail when addressed in such manner.

(f) **Broker may be broker for more than one firm.** A broker may be the broker for more than one firm so long as the firms are at the same location.

(g) **Broker is responsible for acts of unlicensed assistants.** A broker is responsible for all real estate related activities of any unlicensed assistant working within the firm.

605:10-9-4. Advertising

(a) **Requirements and prohibitions.**

(1) A broker, when advertising, must use his or her business trade name or the name under which the broker is licensed; however, yard signs must also include the broker's office telephone number. The advertisement must indicate that the party is a real estate broker and not a private party, to include, but not limited to, "agency", "company", "realty", or "real estate", as the case may be. Legal abbreviations following the trade name or name under which the broker is licensed shall be acceptable as long as they are easily identifiable by the public as such.

(2) No real estate advertisement shall show only a post office box number, telephone number or street address.

(3) A broker, when operating under a franchise name, shall clearly reveal in all office identification and in all advertising other than institutional type advertising designed to promote a common name, the franchise name along with the name of the broker or business trade name as registered with the Commission. A franchise name shall not be the complete business trade name. All institutional type franchise advertising shall indicate that each office is independently owned and operated.

(4) A licensee shall not advertise, either personally or through any media, to sell, buy, exchange, rent, or lease property when such advertisement is directed at or referred to persons of a particular race, color, creed, religion, national origin, familial status or handicap. The contents of any advertisement must be confined to information relative to the property itself, and any advertisement which is directed at or referred to persons of any particular race, color, creed, religion, national origin, familial status, age or handicap is prohibited.

(5) Any advertising in any media which is misleading or inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies is prohibited.

(6) A licensee shall not advertise any property for sale, rent, lease, or exchange in any media unless the broker has first secured the permission of the owner or the owner's authorized representative and said permission has a definite date of expiration.

(7) **Social networking.** A licensee who is engaged in licensed activities through social networking mediums must indicate their license status and include their broker's reference as required elsewhere in this rule.

(8) A licensee shall not use a yard sign at the licensee's personal residence as a marketing tool, to make it appear the real property is for sale, lease or rent when such is not the case.

(9) A broker may, or authorize an associate to, promote a seller incentive with the consent of the seller. The publicity must clearly indicate the incentive is being offered by the seller and not by the licensee and that the promotion only applies to a seller's particular property or properties.

(b) **Associates advertising.**

(1) An associate is prohibited from advertising under only his or her name.

(2) All advertising by an associate must be under the direct supervision of his or her broker.

(3) In all advertising, the associate must include the name of his or her broker or the name under which the broker operates, in such a way that the broker's reference is prominent, conspicuous and easily identifiable. If allowed by a broker, an associate may include in the advertisement:

(A) The associate's personal insignia of which such approval is to be maintained by the broker and which cannot be construed as that of a firm's name.

(B) The associate's personal nickname or alias which must be registered at the Commission prior to its use and which cannot be construed as that of a firm's name.

(C) An associate's contact information.

(D) A team name approved by the broker, ~~so~~as long as the broker's reference is prominent, conspicuous, and easily identifiable, and which cannot be construed as that of a firm's name. The broker's reference must be in close proximity to the team name reference.

(E) A slogan which cannot be construed as that of a firm's name.

(F) A domain/website name that is registered with the broker. Within this domain/website, the broker's reference shall appear on every individual page and/or frame.

(4) An associate's contact information may be added to a yard sign if the yard sign contains the registered name or trade name and office telephone number of the broker so long as it is approved by the broker.

(5) Open house or directional signs used in conjunction with broker's signs do not have to contain the name or trade name of the associate's broker and broker's telephone number.

(c) **Licensee acting as owner, purchaser or direct employee of owner.**

(1) When a licensee, either active or inactive, is purchasing real estate or is the owner of property that is being sold, exchanged, rented or leased and such is being handled either by the licensee or marketed through a real estate firm, the licensee is required to disclose in writing on all documents that pertain to the transaction and in all advertisements that he or she is licensed. On all purchase or lease contracts the licensee is to include their license number.

(2) A licensee who is not acting in the capacity of a licensee but is engaged in buying, selling, leasing or renting real estate as a direct employee for the owner or as an officer for an entity is not required to indicate in the advertising that he or she is licensed.

SUBCHAPTER 11. ASSOCIATE'S LICENSING PROCEDURES

605:10-11-2. Associate licenses

(a) **License issuance and change request.** Each associate license shall be issued to the associate's broker, who shall retain custody of such license. Upon an associate leaving the association of the broker, the associate's license shall be returned to the Commission, together with a release executed by the broker. Any change of association from one firm to another or relocation from one office to another within a firm by an associate must be filed in the Commission office within ten (10) days. The associate's new broker shall be required to file a consent agreement to sponsor said associate on a form provided by the Commission. An associate requesting an association or office change shall be required to pay a fee of Twenty-five Dollars ($25.00).

(b) **Broker refusal to release associate.** In the event a broker refuses for any reason to release an associate, the associate shall notify the broker by certified mail of the disassociation and furnish the Commission a sworn statement that the notification has been sent to the broker. ~~If a broker, when requested to release an associate or when notified by certified mail of the disassociation by an associate, is of the opinion that the association has not been terminated and prevails in court over the associate, the broker may file a request with the Commission for a hearing to determine whether or not the~~

~~associate should be disciplined. In such a filing, the complaining principal broker must show cause in the form of a copy of the court order issuing a verdict in their favor.~~Upon receipt by the Commission of the aforementioned statement, the Commission shall release the licensee.

(c) **Group change requests.** Under certain circumstances as determined by the Commission, the Commission may place a cap of Seven Hundred Fifty Dollars ($750.00) on group transactions requesting licenses to be reissued. To qualify, the request must be received complete and require no further correspondence and/or documents except for the issuance of the licenses.

(d) **Associates transfer.** When an affiliated associate leaves a broker for whom the associate is acting, the broker shall immediately cause the license of that associate to be forwarded to the Commission along with a release of association form. The broker shall make every attempt to notify the associate of the disassociation.

(e) **Active associate may continually act.** An active associate transferring from one broker to a new broker may continually act if the change is done in a timely manner and in compliance with the ten (10) day notification requirement and other applicable rules of this Chapter.

(f) **Compensation due a disassociated associate.** A previous broker may pay compensation due a disassociated associate directly to the associate and not be required to make such payment through the associate's new broker. However, any agreements between the associate and prior broker requiring further activities to be performed in connection with the compensation to be received, can only be performed with consent and acknowledgement of the new broker.

(g) **Change of home address.** An associate is required to notify the Commission office of his or her current home address. The change shall be filed in the Commission office within ten (10) days of the change. No fee is required to change the licensee's records; however a fee of Twenty-five Dollars ($25.00) will be charged if the change requires a new license to be issued.

605:10-11-3. Associate's corporation or association formed for the purpose of receiving compensation

Within the meaning of subsection 14 of Section 858-312 of the "Code" payment of a commission by a broker to an associate's corporation or association does not constitute a payment of a fee (commission) to an unlicensed person provided the corporation or association, the associate and the broker, abide by the following requirements:

(1) The associate's corporation or association ~~may~~shall not perform any act requiring a real estate license and ~~may~~shall not hold itself out as engaged in such activity.

(2) The associate must have ~~a current~~an active individual real estate license.

(3) ~~The broker of the associate must approve of the associate's corporation or association~~The broker of the associate must provide the Commission a written statement approving of the associate's corporation or association.

(4) The associate must be the majority stockholder and president of the corporation or majority member of the association.

(5) Ownership of an associate's corporation or association is limited to spouses and blood relatives.

(6) The associate's corporation or association ~~may~~shall not advertise nor receive referral fees or commissions except from the associate's broker.

(7) The broker and associate must ~~file a written statement with the Commission including~~complete and sign a Commission approved form that includes the following:

(A) A statement that the associate is the majority stockholder and president of the corporation or majority member of the association.

(B) Names and relation of all officers/members and/or stockholders.

(C) Verification that the association or corporation ~~is authorized to transact business in the State of Oklahoma and that the association or corporation~~ is in good standing with the Oklahoma Secretary of State.

~~(8) The associate's broker must file with the Commission a written statement approving of the associate's corporation or association.~~

SUBCHAPTER 13. TRUST ACCOUNT PROCEDURES

605:10-13-1. Duty to account; broker

(a) **Deposit and account of trust/escrow funds.**

(1) The obligation of a broker to remit monies, valuable documents and other property coming into his or her possession within the meaning of subparagraph six (6), Section 858-312 of the "Code" shall be construed to include, but shall not be limited to, the following:

(A) Shall deposit all checks and monies of whatever kind and nature belonging to others in a separate account in a financial institution wherein the deposits are insured by an agency of the federal government.

(B) The broker is required to be a signor on the account.

(C) The account must be in the name of the broker as it appears on the license or trade name as registered with the Commission and styled as a trust or escrow account and shall be maintained by the broker as a depository for deposits belonging to others.

(D) All escrow funds shall be deposited before the end of the third banking day following acceptance of an offer by an offeree unless otherwise agreed to in writing by all interested parties.

(E) The broker shall maintain such funds in said account until the transaction involved is consummated or terminated and proper accounting made.

(F) The broker shall at all times, maintain an accurate and detailed record thereof.

(2) Funds referred to in this subsection shall include, but are not limited to earnest money deposits, money

received upon final settlements, rents, security deposits, money advanced by buyer or seller for the payment of expenses in connection with closing of real estate transactions, and money advanced by his or her principal or others for expenditures on behalf of subject principal.

(b) **Commingling prohibited.** A broker may not keep any personal funds in the trust account except amounts sufficient to insure the integrity of the account and cover any charges made by the financial institution for servicing the trust or escrow account.

(c) **Interest bearing account.** A broker shall not be prohibited from placing escrow monies in an interest bearing account; however, he or she must disclose in writing to all parties that the account bears interest and identify the party receiving the interest. The Commission does not prohibit the broker from receiving the earned interest. In the event the interest is credited to the broker, the broker should, upon final consummation of the transaction, immediately disburse the interest from the account or insure that the amount does not exceed a reasonable amount to cover normal financial institution charges. The broker is required to maintain complete and accurate records of the interest earned. The interest bearing account must be a demand type account; this prohibits the use of certificate of deposit or other types of time deposits as trust/escrow accounts.

(d) **Trust account not mandatory unless funds or items are held.** A broker shall not be required to maintain a trust or escrow account unless monies or other depositable items belonging to others are accepted by the broker and require the broker to place the monies or items in the broker's trust account.

(e) **Trust accounts must be registered with commission.** A broker shall be required to notify the Commission in writing of all trust or escrow accounts, security deposit accounts, rental management operating accounts, and interest bearing accounts in which trust funds are held. Further, if a broker is a signor on a principal's account, the broker shall register that account as a trust account. A broker shall inform the Commission in writing of any accounts which are closed and no longer in use.

(f) **Settlement statement to be furnished.** A broker shall insure that a signed settlement statement is furnished in each real estate transaction wherein he or she acts as broker, at the time such transaction is consummated.

(g) **Payment of funds.** A broker shall pay over all sums of money held by him or her promptly after the closing of any transaction, provided, that upon any hearing to suspend or revoke his or her license under this Section, the failure to pay over any sums of money held by him or her within three (3) days after a closing shall be prima facie evidence of a violation by such person under the provisions of this Section.

(h) **Return of earnest money or items.** In the event a transaction does not consummate, a broker shall promptly disburse the earnest money or items to the proper party in accordance with the terms of the contract. In the event a dispute arises prior to the disbursement, the broker shall follow rule 605:10-13-3 or may file an interpleader action with the appropriate court.

(i) **Documents, items, or monies furnished to all parties.** A broker shall insure the timely delivery or return of all documents, items or monies to a party to a transaction wherein the broker or the broker's associate have provided services.

(j) **Inform all parties pertaining to escrow being held.** A broker shall insure that all parties of each transaction are informed of the details relating to the escrow including, but not limited to, a statement as to the nature of a non-depositable item, the value of the item, and in whose custody the item is being placed.

(k) **Bookkeeping system required.** A broker shall maintain a bookkeeping system i.e., canceled checks, check book, deposit receipts, general accounts ledger, etc. which will accurately and clearly disclose full compliance with the Law relating to the maintaining of trust accounts.

(l) **Record retention.** A broker shall maintain all records and files for a minimum of five (5) years after consummation or termination of a transaction. In the case of trust account records the five years shall commence with the date of disbursal of funds. Records as referenced in this paragraph shall be destroyed in a secure manner.

(m) **Requirements for storage of records on alternative media.** The Real Estate Commission establishes the following requirements for storage of trust account and transaction records stored on alternative media~~, e.g. compact disk, optical disk, microfilm, etc:~~. Alternative media is defined as media that uses an electronic device to store or retrieve the information that pertains to the trust account and transaction documentation. This requirement applies to any computer technology utilized by the broker to create, store or retrieve the aforementioned documentation, whether the computerized device is internal or external to the broker's computer equipment. If a broker utilizes his own equipment or a third party vendor to create, store or retrieve this information, the broker shall ensure that the documentation is maintained and able to be retrieved for the five (5) year time period as required by the Commission.

(1) Trust account records shall be maintained by the broker in their original format for a minimum of two (2) years. Trust account records may then be transferred to an alternative media for the remaining required record retention time.

(2) Records, with the exception of trust account records, may be transferred at any time to an alternative media for the remaining required retention time.

(3) After documents are converted to alternative media, a quality assurance check shall be done to ensure that every document was imaged and can be reproduced in a legible and readable condition on a display device.

(4) After the quality assurance check is completed, the original documents may be destroyed.

(5) A broker shall maintain the alternative media and a means of viewing and retrieving records, and shall provide a true, correct and legible paper copy to the Commission upon request.

(6) A broker shall store copies of the alternative media and the equipment used to read the media in an environment and at a level of quality conducive to maintain the

ability to reproduce the media throughout the retention period. Reproduce means a process in which a document can be converted from the alternative media to a paper copy that is legible and able to be read.

~~(7) A broker shall maintain no less than two (2) copies of the alternative media.~~

(n) **Cessation of real estate activities.** Upon a firm ceasing a portion of real estate activities or ceasing all real estate activities the broker shall:

(1) Notify the Commission in writing of the effective date of such action and advise as to the location where records will be stored and comply with the following:

(A) Return the broker's license certificate and pocket identification card and all license certificates of those associated with the broker to the Commission and advise the Commission as to the circumstances involving any not returned.

(B) Release forms must be filed for all licensees affiliated with the firm.

(C) The broker must either transfer to a new firm or place his or her license on inactive status.

(2) Notify in writing all listing and management clients, as well as parties and co-brokers to existing contracts advising them of the date of cessation of real estate activities.

(3) All advertising in the name of the firm must be terminated and offering signs removed within thirty (30) days of cessation of real estate activities.

(4) Funds in trust accounts and pending contracts must be maintained by the responsible broker until consummation of transaction and final proper disbursal of funds. Upon final disbursements of funds the broker is required to close the account and notify the Commission in writing that the account is closed.

(5) In the event the responsible broker is unable to continue to maintain the funds and/or pending contracts, funds and/or pending contracts may be transferred to another authorized broker, entity or legal representative until consummation and proper disbursal of funds. In this event, the broker must submit a request in writing to the Commission for approval to transfer the contracts and/or funds. Upon written approval by the Commission, the broker must secure approval and obtain new agreements from all parties for transfer of the contracts and/or funds.

(6) If funds, items and/or contracts are transferred to another authorized broker, entity or legal representative and approved by the Commission, the broker transferring such shall be required to compile a record of the following, retain a copy for his or her file and give a copy to the receiving authorized broker, entity or legal representative:

(A) A copy of the written approval from the Commission authorizing the transfer of the contracts and/or funds.

(B) The name and address of the authorized broker, entity or legal representative.

(C) A trust account reconciliation sheet indicating ledger balance and financial institution balance at time of transfer to include the name of each depositor, amount of deposit, date, and purpose of the deposit.

(D) A statement indicating that written agreements were obtained from all parties to each transaction agreeing to the transfer of the funds and/or contracts to another responsible broker, authorized entity or legal representative and that each depositor was notified of the effective date of transfer, and the name of the responsible person or entity.

(7) Any firm merger shall have a thirty (30) day time period in which to provide the Commission the documentation as referenced in subparagraph (n) of this rule. Firm merger means that a licensed firm has been acquired by another licensed firm and the firm that was acquired is ceasing a portion or all of its licensed activities.

(o) **Security breach of personal information.**

(1) Security breach of personal information as defined in Title 24, Oklahoma Statutes, Sections 161-166 means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by a licensee as part of a database of personal information regarding multiple persons. Personal information means the first name or first initial and last name in combination with and linked to any one or more of the following data elements:

(A) social security number,

(B) driver license number or state identification card number issued in lieu of a driver license, or

(C) financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to the financial accounts.

(2) The breach of information would not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

(3) In the event personal information is breached, the licensee is required to send notice to the Commission and to all concerned persons whose information was breached by an unauthorized person or source as required in Title 24, O.S., Section 162 . The licensee is required to comply with all requirements within the Security Breach Notification Act or be subject to disciplinary action by the Commission.

SUBCHAPTER 15. DISCLOSURES

605:10-15-3. Requirements for furnishing psychological factors

Psychologically impacted property is any property ~~whereof~~where the existence of certain circumstances, suspicions or facts may create emotional or psychological disturbance or concerns to a prospective purchaser/lessee, with the potential of influencing a buying/leasing decision. Therefore, the obligation of a real estate licensee to obtain information as

stated in Title 59, O.S., Section 858-513A (1) and (2) shall be performed in the following manner:

(1) Purchaser/lessee must be in the process of making a bona fide offer.

(2) Licensee must receive request in writing from purchaser/lessee.

(3) Purchaser's/Lessee's written request must state that such factor is important to the decision of the purchaser/lessee.

(4) Licensee shall make inquiry of the owner by submitting the written request to the owner.

(5) Licensee shall report any findings to the purchaser/lessee with the consent of the owner.

(6) If the owner refuses to furnish information requested, the licensee shall so advise the purchaser/lessee.

(7) Further, if a purchaser/lessee is requesting information as to whether or not an occupant of the real estate is, or was at any time suspected to be infected, or has been infected with Acquired Immune Deficiency Syndrome, or any other disease which falls under the privacy laws, the information can only be obtained in accordance with the Public Health and Safety Statute, Title 63, O.S., 1988, Section 1-502.2A.

SUBCHAPTER 17. CAUSES FOR INVESTIGATION; HEARING PROCESS; PROHIBITED ACTS; DISCIPLINE

605:10-17-4. Prohibited dealings

Within the meaning of subsection 8 of Section 858-312 of the "Code," untrustworthy, improper, fraudulent or dishonest dealing shall include, but not be limited to, the following:

(1) The making of a brokerage service contract without a date of termination.

(2) Purchasing of property by a licensee for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c), if such property is listed with the broker or his or her firm, without first making full disclosure thereof and obtaining the approval of the owner, or the failure by the licensee to exert his or her best efforts in order to later purchase or acquire the property for himself or herself or another entity in which he or she has interest as defined in 605:10-15-1 (c).

(3) Repeated misrepresentations, even though not fraudulent, which occur as a result of the failure by the licensee to inform himself or herself of pertinent facts concerning property, as to which he or she is performing services.

(4) Procuring the signature to a purchase offer or contract or to any lease or lease proposal which has no definite purchase price or lease rental, or no method of payment, termination date, possession date or property description.

(5) The payment of any fees or amounts due the Commission with a check that is dishonored upon presentation to the bank on which the check is drawn.

(6) Lending a broker's license to an associate; permitting an associate to operate as a broker; or failure of a broker to properly supervise the activities of an associate. A broker permitting the use of his or her license to enable an associate licensed through him or her to, in fact, establish and conduct a brokerage business wherein the broker's only interest is the receipt of a fee for the use of his or her sponsorship.

(7) Failure to make known in writing to any purchaser any interest the licensee has in the property he or she is selling.

(8) Failure of the licensee to inform the buyer and seller <u>in writing</u> at the time the offer is presented that he or she will be expected to pay certain closing costs, such as discount points and approximate amount of said costs.

(9) Failing, upon demand in writing, to respond to a complaint in writing, or to disclose any information within licensee's knowledge, or to produce any document, book or record in licensee's possession or under licensee's control that is real estate related and under the jurisdiction of the Real Estate Commission, for inspection to a member of the Commission staff or any other lawful representative of the Commission.

(10) Failure to reduce a bona fide offer to writing, where a proposed purchaser requests such offer to be submitted.

(11) Failure to submit all written bona fide offers to an owner when such offers are received prior to the seller accepting an offer in writing.

(12) Any conduct in a real estate transaction which demonstrates bad faith or incompetency.

(13) Failing to act, in marketing his or her own property, with the same good faith as when acting in the capacity of a real estate licensee.

(14) An associate who does not possess the license of a broker or branch office broker but is intentionally acting in the capacity of a broker or branch office broker.

(15) Discouraging a party from obtaining an inspection on a property.

(16) Allowing access to, or control of, real property without the owner's authorization.

(17) Knowingly providing false or misleading information to the Commission during the course of an investigation.

(18) Interfering with an investigation by means of persuading, intimidating or threatening any party or witness, or tampering with or withholding evidence relating to the investigation.

(19) Knowingly cooperating with an unlicensed person or entity to perform licensed real estate activities as required by Title 59 O.S. Section 858-301.

(20) Failing to act in accordance with the broker relationship established and/or disclosed with a party.

(21) Failure by a broker to ensure all persons performing real estate licensed activities under the broker are properly licensed.

(22) An associate shall not perform licensed activities outside their broker's supervision.

<u>(23) Failing to maintain documents relating to a trust account or real estate transactionfor the time period as required by Rule 605:10-13-1.</u>

605:10-17-6. Requirements for suspended/revoked ~~brokers and associates~~licensee

(a) A suspended/revoked ~~broker or associate~~licensee must return ~~his or her~~their license certificate and pocket identification card to the Commission office on or before the date the suspension/revocation becomes effective.

(b) When the suspension/revocation period becomes effective, the ~~broker or associate~~licensee shall comply with the following requirements:

(1) A suspended/revoked ~~broker or associate~~licensee~~may~~shall not engage in any activity which requires a real estate license, as defined in Section 858-102. ~~The individual would, in effect, be regarded the same as an unlicensed person.~~

(2) When a broker's license is suspended/revoked, associates under the suspended/revoked broker's supervision will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(3) If the suspended/revoked broker has a branch office, the license for the branch office ~~is also suspended/revoked along with the individual's broker license~~will be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the branch office will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(4) If a managing corporate broker of a corporation is suspended/revoked for an act which was ~~in~~on behalf of the corporation, the broker license of the corporation will~~, unless ordered otherwise, be suspended/revoked~~be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the corporation will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(5) If the managing partner(s) of a partnership is suspended/revoked for an act which was in behalf of the partnership, the broker license of the partnership will~~, unless ordered otherwise, be suspended/revoked~~be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the partnership will automatically be placed on "inactive" for the duration of the suspension/revocation period and the other broker will be placed "inactive" unless he or she requests his or her license to be transferred out of the partnership.

(6) If a managing broker member of an association is suspended/revoked for an act which was in behalf of the association, the broker license of the association will~~, unless ordered otherwise, be suspended/revoked~~be placed inactive unless otherwise ordered by the Commission; and all licensees associated with the association will automatically be placed "inactive" for the duration of the suspension/revocation period unless the licensee requests to be transferred to another broker.

(7) A suspended/revoked ~~broker or associate~~~~may~~licensee shall only receive compensation during the suspension/revocation period for acts which were performed during the period in which ~~he or she~~the licensee was ~~properly~~actively licensed.

(8) Listings must be cancelled by a suspended/revoked broker between the time the Order of suspension/revocation is received and the effective date of suspension/revocation, as listings will be void on the date the suspension/revocation becomes effective. ~~Broker has breached the listing contract since he or she is unable to fulfill his or her agreement. Seller is free to relist with another broker of his or her choice.~~

(9) A suspended/revoked broker ~~may~~shall not assign listings to another broker without the written consent of the owner of the listed property.

(10) A suspended/revoked broker ~~may~~shall not advertise real estate in any manner, and must remove and discontinue all advertising.

(11) The telephone in a suspended/revoked broker's office ~~may~~shall not be answered in any manner to indicate the suspended/revoked broker is currently active in real estate.

(12) All pending contracts, items or monies placed with the suspended/revoked broker must be transferred to another responsible broker as approved by the Commission and in compliance with Section 605:10-13-1 ~~(m.)~~(n).

(13) A suspended/revoked licensee ~~will~~shall be required to comply with Section 605:10-13-1 ~~(m)~~(n) and ~~will~~ provide the required information to the Commission prior to the effective date of suspension/revocation.

(14) A representative of the Commission ~~will~~shall visit the office of any suspended/revoked broker prior to the effective date of the suspension/revocation to insure compliance with the requirements of (1) through (13) of this subsection.

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [REVOKED]

APPENDIX A. RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT [NEW]

Notice to Seller: Oklahoma Law (the "Residential Property Condition Disclosure Act," Title 60, O.S., Sections 831 et.seq., effective July 1, 1995) requires Sellers of 1 and/or 2 residential dwelling units to complete this form. A Seller must complete, sign and date this disclosure form and deliver it or cause it to be delivered to a Purchaser as soon as practicable, but in any event no later than before an offer is accepted by the Seller. If the Seller becomes aware of a defect after delivery of this statement, but before the Seller accepts an offer to purchase, the Seller must deliver or cause to be delivered an amended disclosure statement disclosing the newly discovered defect to the Purchaser. If the disclosure form or amendment is delivered to a Purchaser after an offer to purchase has been made by the Purchaser, the offer to purchase shall be accepted by the Seller only after a Purchaser has acknowledged receipt of this statement and confirmed the offer to purchase in writing.

Notice to Purchaser: The declarations and information contained in this disclosure statement are not warranties, express or implied of any kind, and are not a substitute for any inspections or warranties the purchaser may wish to obtain. The information contained in this disclosure statement is not intended to be a part of any contract between the Purchaser and Seller. The information and statements contained in this disclosure statement are declarations and representations of the Seller and are not the representations of the real estate licensee.

Instructions to the Seller: (1) Answer ALL questions. (2) Report known conditions affecting the property. (3) Complete this form yourself. (4) If some items do not apply to your property, circle N/A (not applicable). If you do not know the facts, circle Unk (unknown). (5) The date of completion by you may not be more than 180 days prior to the date this form is received by a purchaser.

LOCATION OF SUBJECT PROPERTY: _____

_____

SELLER IS ___ IS NOT ___ OCCUPYING THE SUBJECT PROPERTY.

Appliances/Systems/Services: (The items below are in **NORMAL** working order)

	Circle below			
Sprinkler System	N/A	Yes	No	Unk
Swimming Pool	N/A	Yes	No	Unk
Hot Tub/Spa	N/A	Yes	No	Unk
Water Heater __Electric __Gas __Solar	N/A	Yes	No	Unk
Water Purifier	N/A	Yes	No	Unk
Water Softener __Leased __Owned	N/A	Yes	No	Unk
Sump Pump	N/A	Yes	No	Unk
Plumbing	N/A	Yes	No	Unk
Whirlpool Tub	N/A	Yes	No	Unk
Sewer System __Public __Septic __Lagoon	N/A	Yes	No	Unk
Air Conditioning System __Electric __Gas __Heat Pump	N/A	Yes	No	Unk
Window Air Conditioner(s)	N/A	Yes	No	Unk
Attic Fan	N/A	Yes	No	Unk
Fireplaces	N/A	Yes	No	Unk
Heating System __Electric __Gas __Heat Pump	N/A	Yes	No	Unk

	Circle below			
Humidifier	N/A	Yes	No	Unk
Gas Supply __Public __Propane __Butane	N/A	Yes	No	Unk
Propane Tank __Leased __Owned	N/A	Yes	No	Unk
Ceiling Fans	N/A	Yes	No	Unk
Electric Air Purifier	N/A	Yes	No	Unk
Garage Door Opener/ Control	N/A	Yes	No	Unk
Intercom	N/A	Yes	No	Unk
Central Vacuum	N/A	Yes	No	Unk
Security System __Rent __Own __Monitored	N/A	Yes	No	Unk
Smoke Detectors	N/A	Yes	No	Unk
Dishwasher	N/A	Yes	No	Unk
Electrical Wiring	N/A	Yes	No	Unk
Garbage Disposal	N/A	Yes	No	Unk
Gas Grill	N/A	Yes	No	Unk
Vent Hood	N/A	Yes	No	Unk
Microwave Oven	N/A	Yes	No	Unk
Built-in Oven/Range	N/A	Yes	No	Unk
Kitchen Stove	N/A	Yes	No	Unk
Trash Compactor	N/A	Yes	No	Unk

Seller's Initials_____ Seller's Initials_____

Buyer's Initials_____ Buyer's Initials _____

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LOCATION OF SUBJECT PROPERTY _____

Source of Household Water	Other Items _____	Yes	No	Unk
	Other _____	Yes	No	Unk
___Public ___Private ___Well Yes No Unk	Other _____	Yes	No	Unk

IF YOU HAVE ANSWERED NO to any of the above, please explain. Attach additional pages with your signature(s).

_____

Zoning, Flood and Water	**Circle below**		
1. Property is zoned: ***(Check one)*** ___residential ___commercial ___historical ___agricultural ___industrial ___office ___urban conservation ___other ___ unknown			
2. What is the flood zone status of the property? _____			Unk
3. Are you aware of any flood insurance requirements concerning the property?	Yes	No	Unk
4. Do you have flood insurance on the property?	Yes	No	Unk
5. Has the property been damaged or affected by flood, storm run-off, sewer backup, drainage or grading problems?	Yes	No	Unk
6. Are you aware of any surface or ground water drainage systems which assist in draining the property, e.g. french drains?	Yes	No	Unk
7. Has there been any occurrence of water in the heating and air conditioning duct system?	Yes	No	Unk
8. Are you aware of water seepage, leakage or other drainage problems in any of the improvements on the property?	Yes	No	Unk
Additions/Alterations/Repairs			
9. Have any additions or alterations been made without required permits?	Yes	No	Unk
10. Are you aware of previous foundation repairs?	Yes	No	Unk
11. Are you aware of any alterations or repairs having been made to correct defects or problems?	Yes	No	Unk
12. Are you aware of any defect or condition affecting the interior or exterior walls, ceilings, slab/foundation, basement/storm cellar, floors, windows, doors, fences or garage?	Yes	No	Unk
13. Has the roof ever been repaired or replaced during your ownership of the property?	Yes	No	Unk
14. Approximate age of roof covering, if known _____ number of layers, if known _____			Unk
15. Do you know of any current problems with the roof?	Yes	No	Unk
16. Are you aware of treatment for termite or wood-destroying organism infestation?	Yes	No	Unk
17. Do you have a termite bait system installed on the property?	Yes	No	Unk
18. If yes, is it monitored by a licensed exterminating company? ***(Check one)*** ___yes ___no Annual cost $_____			
19. Are you aware of any damage caused by termites or wood-destroying organisms?	Yes	No	Unk
20. Are you aware of major fire, tornado, hail, earthquake or wind damage?	Yes	No	Unk
21. Are you aware of problems pertaining to sewer, septic, lateral lines or aerobic system?	Yes	No	Unk
Environmental			
22. Are you aware of the presence of asbestos?	Yes	No	Unk
23. Are you aware of the presence of radon gas?	Yes	No	Unk
24. Have you tested for radon gas?	Yes	No	Unk
25. Are you aware of the presence of lead-based paint?	Yes	No	Unk
26. Have you tested for lead-based paint?	Yes	No	Unk
27. Are you aware of any underground storage tanks on the property?	Yes	No	Unk
28. Are you aware of the presence of a landfill on the property?	Yes	No	Unk
29. Are you aware of existence of hazardous or regulated materials and other conditions having an environmental impact?	Yes	No	Unk
30. Are you aware of existence of prior manufacturing of methamphetamine?	Yes	No	Unk
31. Have you had the property inspected for mold?	Yes	No	Unk
32. Have you had any remedial treatment for mold on the property?	Yes	No	Unk
33. Are you aware of any condition on the property that would impair the health or safety of the occupants?	Yes	No	Unk
Property Shared in Common, Easements, Homeowner's Association, Legal			
34. Are you aware of features of the property shared in common with adjoining landowners, such as fences, driveways, and roads whose use or responsibility has an affect on the property?	Yes	No	Unk
35. Other than utility easements serving the property, are you aware of easements or right-of-ways affecting the property?	Yes	No	Unk

Seller's Initials_____ Seller's Initials_____ Buyer's Initials_____ Buyer's Initials_____

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LOCATION OF SUBJECT PROPERTY _____

36. Are you aware of encroachments affecting the property?	Yes	No	Unk
37. Are you aware of a mandatory homeowner's association?	Yes	No	Unk
Amount of dues $ _____ Special Assessment $ _____			
Payable: ***(Check one)*** ___monthly ___quarterly ___annually			
Are there unpaid dues or assessments for the Property? ***(Check one)*** ___yes ___no			
If yes, amount $ _____ Manager's Name: _____			
Phone No. _____			
38. Are you aware of any zoning, building code or setback requirement violations?	Yes	No	Unk
39. Are you aware of any notices from any government or government-sponsored agencies or any other entities affecting the property?	Yes	No	Unk
40. Are you aware of any filed litigation or lawsuit(s), directly or indirectly, affecting the property, including a foreclosure?	Yes	No	Unk
41. Is the property located in a fire district which requires payment?	Yes	No	Unk
Amount of fees $ _____ To Whom Paid _____			
Payable ***(Check one)*** __monthly __quarterly __annually			
42. Is the property located in a private utility district?	Yes	No	Unk
(Check applicable) water__ garbage__ sewer__ other__			
If other, explain: _____			
Initial membership fee $_____ annual membership fee $_____			
(If more than one (1) utility, attach additional pages.)			
Miscellaneous			
43. Are you aware of other defect(s), affecting the property, not disclosed above?	Yes	No	Unk
44. Are you aware of any other fees or dues required on the property that you have not disclosed?	Yes	No	Unk

If you answered "YES" to any of the items 1-44 above, list the item number(s) and explain. ***(If needed, attach additional pages, with your signature(s), date(s) and location of subject property.***

_____

_____

On the date this form is signed, the seller states that based on seller's **CURRENT ACTUAL KNOWLEDGE** of the property, the information contained above is true and accurate.

Are there any additional pages attached to this disclosure *(circle one)*: Yes No. If yes, how many? _____

Seller's Signature _____ Date _____ Seller's Signature _____ Date _____

A real estate licensee has no duty to the Seller or the Purchaser to conduct an independent inspection of the property and has no duty to independently verify the accuracy or completeness of any statement made by the seller in this disclosure statement.

The Purchaser understands that the disclosures given by the Seller on this statement is not a warranty of condition. The Purchaser is urged to carefully inspect the property and, if desired, to have the property inspected by a licensed expert. For specific uses, restrictions and flood zone status, contact the local planning, zoning and/or engineering department. The Purchaser acknowledges that the Purchaser has read and received a signed copy of this statement. This completed acknowledgement should accompany an offer to purchase on the property identified. This is to advise that this disclosure statement is not valid after 180 days from the date completed by the Seller.

Purchaser's Signature _____ Date _____ Purchaser's Signature _____ Date _____

The disclosure and disclaimer statement forms and the Oklahoma Residential Property Condition Disclosure Act information pamphlet are made available at the Oklahoma Real Estate Commission (OREC), Denver N. Davison Building, 1915 N. Stiles, Suite 200, Oklahoma City, Oklahoma 73105, or visit OREC's Web site www.orec.ok.gov.

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[OAR Docket #12-743; filed 5-25-12]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-623]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Administrative Components of the Department
612:1-3-2.1. The Chief of Staff of Rehabilitation Services [AMENDED]
Subchapter 11. Compliance with the Americans with Disabilities Act of 1990
Part 1. Purpose and Legal Basis
612:1-11-4. DRS and the Americans with Disabilities Act [AMENDED]
Part 3. Reasonable Accommodation
612:1-11-15. Overview of reasonable accommodation [AMENDED]
Part 9. Medical and Other Considerations
612:1-11-55. Medical documentation [AMENDED]
Subchapter 13. Civil Rights and Nondiscrimination on Basis of Race, Color, National Origin, Sex, Age or Disability
612:1-13-7. Composition of planning and policymaking bodies [AMENDED]
612:1-13-9. Complaint rules and procedures [AMENDED]
AUTHORITY:
The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, sections 701 through 791; Oklahoma Statute Title 74, Section 166.1 et seq.
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Failure of the Legislature to disapprove the rules resulted in approval on May 9, 2012
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July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Changes to Chapter 1 include updating and clarifying language. Due to changes in state law and per legal requirements, changes in our policy are now necessary.
CONTACT PERSON:
Ray Leard, Administrative Program Officer, Policy Development, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3406

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 3. ADMINISTRATIVE COMPONENTS OF THE DEPARTMENT

612:1-3-2.1. The Chief of Staff of Rehabilitation Services

(a) The Chief of Staff of Rehabilitation Services assists the Director of the Department in fulfilling the chief administrative and executive responsibilities for day-to-day direction of the activities necessary for DRS to attain its mission as established by Title 74, Section 166.1 et seq. of Oklahoma State Statute. The work of the Chief of Staff is overseen by the Director of the Department of Rehabilitation Services. In the Director's absence, the work of the Chief of Staff is overseen by the Commission for Rehabilitation Services.

(b) To the extent deemed necessary and prudent by the Director, or in the Director's absence, the Chief of Staff supervises the Division Administrators for Vocational Rehabilitation Services, Visual Services, Disability Determination, Financial Services Division, Management Services, and the Superintendents of the School for the Blind and the School for the Deaf. ~~In~~To the extent deemed necessary and prudent by the director, or in the Director's absence, the Chief of Staff also supervises the Public Information and External Relations Officers, the Chief Fiscal Officer, and the Civil Rights Administrator.

(c) The Chief of Staff duties include:

(1) assuring that all of DRS is working toward its mission and the goals established by the Commission and the Director through aggressive implementation of the planning and budgeting system;

(2) serving as staff to the Commission for Rehabilitation Services at the direction of, or in the absence of, the Director, providing necessary input for decision-making and assuring that actions approved by the Commission are carried out;

(3) developing and maintaining cooperative relationships with lawmakers and other officials, both federal and state, to assure the fulfillment of DRS's mission;

(4) maximizing all available resources for the delivery of services to the clients DRS is charged to serve;

(5) serving as a spokesperson for DRS and as an advocate for the clients it serves;

(6) assuring the coordination of services with other state agencies; and,

(7) carrying out such other duties and assignments the Director, or in the Director's absence, the Commission deems necessary and prudent to attain the mission of DRS; delegating authority to complete duties assigned, and overseeing the accomplishment of those assigned responsibilities.

SUBCHAPTER 11. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

PART 1. PURPOSE AND LEGAL BASIS

612:1-11-4. DRS and the Americans with Disabilities Act

(a) The Americans with Disabilities Act (ADA) is designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities or DRS services that are available to others. ~~The Act does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities. However, while the Civil Rights Act of 1964 prohibits any consideration of personal characteristics such as race or national origin, the ADA takes a different approach. When an individual's disability creates a barrier to employment opportunities or interferes with the opportunity to receive services, the ADA requires the Department to consider whether reasonable accommodation could remove the barrier.~~

(b) The Department of Rehabilitation Services complies with the provisions of the ADA by prohibiting discrimination against individuals with disabilities. This prohibition applies to:

(1) **DRS employees and individuals seeking employment.** Qualified individuals with disabilities must receive equal consideration in job application procedures; hiring, advancement, or discharge proceedings; employee compensation; job training; and other terms, conditions, and privileges of employment;

(2) **DRS clients and individuals applying for services.** Qualified individuals with disabilities must have equal access to all services, programs, and activities offered or provided by DRS.

PART 3. REASONABLE ACCOMMODATION

612:1-11-15. Overview of reasonable accommodation

(a) Reasonable accommodation is a modification or adjustment to a job, the work environment, ~~or the way things are usually done~~ or policies that enables a qualified individual with a disability to enjoy an equal employment opportunity. A reasonable accommodation must be effective. ~~An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability.~~

(b) The ADA requires reasonable accommodation in three aspects of employment:

(1) to ensure equal opportunity in the application process;

(2) to enable a qualified individual with a disability to perform the essential functions of a job; and,

(3) to enable an employee with a disability to enjoy equal benefits and privileges of employment.

~~(c) A reasonable accommodation must be an effective accommodation. It does not have to be the best accommodation available, as long as it is effective for the purpose, and it does not have to ensure equal results. For example, if a second floor lunchroom cannot be made accessible because of undue hardship, a comparable facility can be provided on the first floor.~~

(~~d~~c) Reasonable accommodation requirements do not include accommodations that are ~~primarily~~ for personal use. ~~Equipment or devices that assist a person in daily activities on and off the job, such as eyeglasses, hearing aids, or wheelchairs, are not required unless they are specifically designed to meet job related rather than personal needs.~~

(~~e~~d) ~~In general~~ Generally, it is the responsibility of the applicant or employee with a disability to inform the Department that an accommodation is needed to participate in the application process, to perform essential job functions, or to receive equal benefits and privileges of employment. ~~The Department is not required to provide an accommodation if unaware of the need. However, the Department is responsible for notifying job applicants and employees of its obligation to provide accommodations for otherwise qualified individuals with disabilities.~~

(~~f~~e) If an employee with a known disability is not performing well, or is having difficulty performing a job, the Department may assess whether this is due to a disability and may inquire whether the employee needs ~~an~~ a reasonable accommodation. It is not appropriate for the employee's supervisor to independently initiate a request if the employee does not wish one. An individual with a disability is not required to accept an accommodation if the individual has not requested an accommodation and does not believe one is needed. However, if the individual refuses an accommodation necessary to perform essential job functions, and as a result cannot perform those functions, the individual may not be considered qualified.

(~~g~~f) When a qualified individual with a disability requests an accommodation, the Department must make a reasonable effort to provide an accommodation that is effective for the individual. The person with the disability must always be consulted as the first step in considering an accommodation. The Department and the individual ~~should~~ shall work together to identify the appropriate accommodation. The Department may consult the Job Accommodation Network or other technical assistance entities as a resource in order to reasonably accommodate an employee, applicant, or client. ~~In many instances the appropriate reasonable accommodation may be obvious. However, in some instances neither the individual requesting the accommodation nor the Department will be able to readily identify the appropriate accommodation. Under such circumstances, it may be necessary to initiate a defined problem-solving process such as the step-by-step process described below:~~

~~(1) Analyze the particular job involved and determine its purpose and essential functions.~~

~~(2) Consult with the individual with a disability to determine the precise job related limitations imposed by the individual's disability and how those limitations could be overcome with reasonable accommodation.~~

~~(3) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position; and,~~

~~(4) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for the employee and the Department.~~

~~(5) When consultation with the individual in need of an accommodation still does not reveal potential appropriate accommodations, then the Department, as part of this process, may solicit technical assistance for determination of how to accommodate the particular individual in the specific situation. Such assistance can be sought from Rehabilitation Specialists or from local disability constituent organizations.~~

(~~h~~g) An individual with a disability may choose to provide his or her own accommodation. The individual's willingness to do so does not relieve the Department of the duty to provide the accommodation should the individual for any reason be unable or unwilling to continue to provide the accommodation.

(~~i~~h) The Department may request documentation from an appropriate licensed professional regarding~~of~~ an individual's functional limitations, when they are not apparent, to support a reasonable accommodation request.

PART 9. MEDICAL AND OTHER CONSIDERATIONS

612:1-11-55. Medical documentation

(a) Medical documentation may be necessary in order for the Department to:

(1) determine if the employee is disabled under the ~~meaning~~ definitions of the ADA;

(2) determine whether an accommodation is needed; and if so,

(3) assess what kind of accommodation is necessary.

(b) Documentation may be unnecessary when both the disability and the accommodation are obvious.

(c) If, during any step in the procedure, the medical documentation presented in support of a request for reasonable accommodation is not adequate, the Department will advise the employee and request submission of additional documentation. When appropriate, a memorandum addressed to the physician or appropriate licensed professional explaining what information is needed and why it is needed can be provided to the employee.

SUBCHAPTER 13. CIVIL RIGHTS AND NONDISCRIMINATION ON BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE OR DISABILITY

612:1-13-7. Composition of planning and policymaking bodies

(a) The Department shall provide ~~racial and nationality groups~~ individuals that are included in the affirmative action categories the opportunity for membership on its planning and advisory bodies.

(b) The Department shall ensure that all its institutional vendors are aware and ~~will make every reasonable effort to~~ shall comply with the legal stipulations outlined in Federal regulations pertaining to minorities or individuals with disabilities in planning and advisory bodies.

(c) The Department will incorporate in its requirements for institutional vendors as a condition of their approval, an assurance from those institutional vendors that every reasonable effort is made to comply with provisions of the Civil Rights Act.

(d) The Department will further provide interested persons, including individuals with disabilities or organizations representing individuals with disabilities, the opportunity to assist in the self-evaluation of its current policies and practices and the effect thereof in regard to ADA and Section 504.

612:1-13-9. Complaint rules and procedures

(a) Any person who believes that he/she, or any specific class of persons, has been subjected to discrimination in a Department program subject to Title VI, ADA, or Section 504 may, personally or by a representative, file a written complaint. Department personnel will assist the complainant in the writing of the complaint if such assistance is needed. Complaints may be filed with the Department or the Human Rights Commission. If filed with the Department, the complaint will be brought to the attention of the Director. A complaint must be filed no later than 180 days from the date of an alleged discriminatory act. The time for filing may, however, be extended by the responsible Office or Civil Rights official.

(b) After determining that the complaint falls within the jurisdiction of the Civil Rights Administrator, he or she must insure a prompt and thorough investigation of the complaint. Following investigation of the complaint, the responsible official of the Department will determine whether or not discrimination did in fact occur, necessary action will be taken to correct the discriminatory practice, or require it to be corrected, and prevent any recurrence of such discrimination. The Department will take follow-up action to determine that the corrective measures have eliminated the conditions that contributed to the discriminatory act.

(c) The complainant will be advised in writing within ~~30~~45 days from the receipt of the complaint as to the findings of the Department regarding the complaint. In the same written notice the complainant will be advised if he/she is not satisfied with the decision he/she may appeal to the U.S. Department of Education. The Department will maintain records to show the nature of the complaint, the details of the investigation, and the action taken by the Department. If the complaint has been found to be valid, the records will indicate the nature of the corrective action taken. All complaint records will be available for review by the Human Rights Commission.

(d) In those cases where the complaint is filed initially with the Human Rights Commission, that office may proceed to investigate the complaint utilizing its own resources, or it may request the Department to conduct the investigation. In either instance, the identity of the complainants will be kept

confidential, except to the extent necessary for the conduction of any investigation, hearing, or judicial proceeding.

[OAR Docket #12-623; filed 5-11-12]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 10. VOCATIONAL REHABILITATION AND VISUAL SERVICES

[OAR Docket #12-624]

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RULES:
Subchapter 1. General Provisions
612:10-1-2. Definitions [AMENDED]
612:10-1-7. Purchase of services and goods for individuals with disabilities [AMENDED]
Subchapter 7. Vocational Rehabilitation and Visual Services
Part 3. Case Processing Requirements
612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services [AMENDED]
612:10-7-25.1. Order of selection [AMENDED]
Part 9. Actions Requiring Review and Approval
612:10-7-87. Actions requiring supervisor's approval [AMENDED]
Part 11. Physical and Mental Restoration Services
612:10-7-98. General guidelines for physical and mental restoration services [AMENDED]
Part 23. Self-Employment Programs and Other Services
612:10-7-230.4. Agency financial contribution to self-employment/purchasing [AMENDED]
Subchapter 13. Special Services for the Deaf and Hard of Hearing
Part 1. Service Programs
612:10-13-4. Special services and devices for individuals who are dear, hard of hearing, deaf-blind or have communicative disorders [REVOKED]
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The Oklahoma Commission for Rehabilitation Services; Rehabilitation Act, United States Code Title 29, sections 701 through 791; Oklahoma Statute Title 74, Section 166.1 et seq.
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N/A
ANALYSIS:
Changes to Chapter 10 involve updating and clarifying language; conforming to changes in state law and federal regulations; requiring supervisory review for certain levels of dental costs and self-employment plans.
CONTACT PERSON:
Ray Leard, Administrative Programs Officer, Policy Development, Department of Rehabilitation Services, 3535 N.W. 58th, Suite 500, Oklahoma City, OK 73112 (405) 951-3406

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. GENERAL PROVISIONS

612:10-1-2. Definitions

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

"Act" means the Rehabilitation Act [29 USC 701 et seq.].

"ADL" Activities of Daily Living often refer to the routine activities carried out for personal hygiene and health (including bathing, dressing, feeding) and for operation of a household.

"Applicant" means an individual who has completed and signed an agency application form or has otherwise requested vocational rehabilitation services; who has provided information necessary to initiate an assessment to determine eligibility and priority for services; and who is available to complete the assessment process.

"Assistive technology" means technology designed to be utilized in an assistive technology device or service.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

"Authorized Representative" means a client's or applicant's parent, guardian, advocate (i.e. Client Assistance Program) or other person designated by the client or applicant as the individual authorized to deal with the Department on behalf of the client or applicant, consistent with provisions of the Act. Authorized representative does not include an employee of the Department of Rehabilitation Services, another state agency, or vendor of the Department unless the person is actually the parent, guardian, or is serving in the capacity of guardian (for example: court appointed).

"Best correction" refers to the use of standard eyeglasses or contact lenses and does not include the use of bioptic telescopic systems or specialized lenses which cannot be worn by the individual on a sustained basis.

"Blind" means persons who are blind within the meaning of the State Law relating to Vocational Rehabilitation. Legal blindness means a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of 20 degrees or less.

"Client/Consumer" means an individual found eligible and receiving services under the Act.

"Clubhouse model" means a psychosocial and vocational approach to work adjustment for people with mental illness. The work-ordered day is a core element of the clubhouse, which focuses on strengths, talents and abilities. Work in the clubhouse helps members develop appropriate social skills and gain self-worth, purpose, and confidence. The clubhouse enables members to return to paid work through Transitional Employment, Supported Employment and independent employment.

"Community rehabilitation program" (CRP) means a program that directly provides or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and provides singly or in combination, services for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement.

"Comparable services and benefits" means services that are provided or paid for in whole or in part by other Federal, state or local public agencies, health insurance or employee benefits, and are available to the individual at the time needed to further the progress of the individual toward achieving his/her identified employment outcome.

"Compensatory training" means training required before the client can enter a formal training program or employment, such as pre-vocational or personal adjustment training.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which the individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have disabilities.

"Consumer Independence Support Services" (CISS) are defined as providing independent living assessment, intensive counseling, community integration, and housing modifications to further assist consumers with severe disabilities in achieving independence.

"Continuity of Services" means once an individual is selected for services in accordance with policy, regardless of the priority category from which the individual was selected, the individual will receive the necessary purchased services, including post-employment services.

"Counselor" means the qualified rehabilitation professional, who is an employee of the designated state unit, and who has primary responsibility for the management of an individual's rehabilitation services case record, including determination of eligibility, service planning and management, counseling and guidance, and determination of successful or unsuccessful rehabilitation. Counselor is equivalent to such terms as VR/VS Specialist and VR/VS Coordinator.

"Department" unless otherwise indicated in the text, means the Department of Rehabilitation Services as constituted in 74 O.S., Section 166.1 et seq.

"DRS" means the Department of Rehabilitation Services.

"DVR" means the Division of Vocational Rehabilitation.

"DVS" means the Division of Visual Services.

"Eligibility" or "Eligible" means:

(A) when used in relation to an individual's qualification for Vocational Rehabilitation services, a determination that the individual has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; can benefit in terms of an employment outcome from rehabilitation services; and requires vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment;

(B) when used in relation to an individual's qualification for Supported Employment services, a determination that the individual is eligible for Vocational Rehabilitation services; is an individual with the most severe disabilities (priority group one); and

(i) for whom competitive employment has not traditionally occurred; or

(ii) for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(iii) who, because of the nature and severity of their disability, need intensive supported employment services, and extended services after the transition from intensive supported employment services, in order to perform such work;

(C) when used in relation to an individual's qualification for Rehabilitation Teaching services, certification that the individual is legally and/or functionally blind or has a rapidly progressive condition and may have secondary disabilities; the individual has identifiable deficiencies in independent living due to disabilities; and it is expected services will improve the individual's independence in the home and community;

(D) when used in relation to an individual's qualification for Independent Living Rehabilitation services, certification that the individual has a severe physical or mental disability; the disability results in a substantial limitation or inability to function independently in the family or community or to continue in employment; and a reasonable expectation that independent living services will significantly assist the individual improve his/her ability to function independently.

"Employment and Retention" (E&R) means short-term job coach support for individuals with severe disabilities who require assistance preparing for, obtaining, and maintaining employment.

"Employment outcome" means, with respect to an eligible individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market to the greatest extent practicable; supported employment; or any other type of employment (including self-employment, telecommuting, or business ownership) that is consistent with an individual's strengths, reso

"Extended employment" means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act and any needed

support services to an individual with a disability to enable the individual to continue to train or otherwise prepare for competitive employment, unless the individual through informed choice chooses to remain in extended employment.

"Extended period of time" means when appropriate services are provided in a timely and orderly manner, completion of the Individualized Plan for Employment (IPE) will be expected to require a minimum of 6 months.

"Extended services" means ongoing support services provided to individuals with the most severe disabilities after the time-limited vocational rehabilitation services have been completed and job stabilization has been achieved. They consist of specific services, including natural supports, needed to maintain the supported employment placement. Extended services are paid from funding sources other than DRS and are specifically identified in the IPE.

"Extreme medical risk" means a risk of substantially increasing functional impairment or risk of death if medical services are not provided expeditiously.

"Functional capacities" means a client's assets, strengths, and resources which maintain or increase the individual's ability to work. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills.

"Functional limitations" means physical or mental conditions, emergent from a disability, which impair, interfere with, or impede one or more of an individual's functional capacities.

"Higher education" means universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing.

"Highly challenged" describes a client receiving supported employment services who, due to the nature of the disability, requires a greater level of support from the job coach to achieve and maintain employment.

"Homemaker" means a person whose primary work is performance of duties related to upkeep and maintenance of a home.

"IEP" means Individualized Education Program as required by the Individuals with Disabilities Education Act.

"Independent Living (IL) Core services" is defined as information and referral services; independent living skills training; peer counseling; and individual and systems advocacy.

"Independent Living Services" as defined in the Rehabilitation Act, 29 USC Section 705 (17) and (18), include IL core services and counseling, housing procurement and modifications, personal assistance, mobility training, rehabilitation technology, life skills training, interpreters, readers, transportation, community integration, supported living, physical rehabilitation, aids and devices, social and recreational opportunities, and other services that are necessary and not inconsistent with the Act's provisions related to independent living.

"Individual with a disability" means an individual having one or more physical or mental conditions which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's employment activities or vocational functioning.

"Individual with a severe disability" means with respect to eligibility for the state's Optional Program for Hiring Applicants with Disabilities, an individual who has a physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome.

"Individual with significant disability" means an individual with a significant barrier to employment, as used in the Rehabilitation Act amendments of 1998, and an individual:

(A) who has a physical or mental impairment seriously limiting one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

"Individual with the most significant disability" means an individual with the most significant barrier to employment as used in the Rehabilitation Act amendments of 1998, and an individual with physical or mental disabilities:

(A) who has a severe physical or mental disability that seriously limits three or more major life activities in terms of an employment outcome;

(B) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(C) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, mental retardation, multiple sclerosis, muscular dystrophy, musculoskeletal disorder, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and

vocational rehabilitation needs to cause comparable substantial functional limitation.

"Integrated setting" means:

(A) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals.

(B) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

"Intercurrent (acute) conditions" means an illness or injury occurring during the actual course of an individual's rehabilitation which, if not cared for, will complicate or delay achievement of the client's employment outcome as identified in the client's IPE.

"IPE" means the Individualized Plan for Employment.

"Job Club" is a structured learning experience for a client to build skills in self-assessment, resume development, job search and research strategies, and interview techniques to assist the person to enter a career of their choice.

"Job Coach/Employment Training Specialist" means a qualified individual providing support services to eligible individuals in supported employment and employment and retention programs. Services directly support the eligible individual's work activity including marketing and job development, applied behavioral analysis, job and work site assessment, training and worker assessment, job matching procedures, and teaching job skills.

"Long-term treatment" means medical or psychological treatment that is expected to last more than three months.

"Maintenance" is a service provided to assist with the out-of-ordinary or extra expenses to the individual resulting from and needed to support the individual's participation in diagnostic, evaluative, or other substantial services in the IPE. Activities of Daily Living (ADL) expenses are not eligible for maintenance payments.

"Milestones" means a payment system that reimburses a vendor based on incentives and outcomes. The vendor is paid when the client completes pre-defined checkpoints on the way to a desired employment goal.

"Multiple services" means the counseling and guidance provided as a routine part of case management plus two or more VR services. Comparable benefits and/or services can count toward meeting the definition of multiple services. Services routinely provided as a package do not count as multiple services for the purpose of determining the presence of a significant disability, even if two or more services are included in the package.

"Natural supports" means any assistance, relationships or interactions that allow a person to maintain employment in ways that correspond to the typical work routines and social interactions of other employees. Natural supports may be developed through relationships with people or put into place by the adaptation of the work environment itself, depending on the support needs of the person and the environment.

"Occupational license" means any license, permit, or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation.

"Ongoing support services" means services specified in the IPE according to individual need, which support and maintain an individual with the most severe disabilities in supported employment. Sponsored ongoing support services are provided from the time of placement until the individual is stabilized on the job. Ongoing support services are provided by one or more extended services providers, or by natural supports, following transition throughout the individual's term of employment. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Other Qualified Rehabilitation Personnel" means qualified rehabilitation personnel who, in addition to rehabilitation counselors, are necessary to facilitate the accomplishment of the employment outcomes and objectives of an individual (Section 100(a)(3)(E) of the Act.) Other qualified rehabilitation personnel include, but are not limited to, rehabilitation teachers of the blind who are certified at the national level as Certified Vision Rehabilitation Therapists (CVRT) or who are CRC-eligible (Section 101(a)(7)(B) of the Act). The agency has determined that nationally certified rehabilitation teachers of the blind are necessary for the provision of vocational rehabilitation services and accomplishment of employment outcomes in Homemaker cases and that in their role as Other Qualified Rehabilitation Personnel; nationally certified rehabilitation teachers are approved to manage Homemaker cases through closure.

"Package of services" means several services which are usually provided together for the same purpose. The services in a package are usually, but not always, from the same category of services (see definition of multiple services, this section). Examples include, but are not limited to: surgery, anesthesia, and hospitalization; or personal computer, software, and peripheral equipment.

"Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability.

"Physical and mental restoration services" means services which are necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive, within a reasonable period of time.

"Physical or mental disability" means a physical or mental condition which, if not corrected, materially limits, contributes to limiting or will result in limiting an individual's activities or functioning.

"Rehabilitation Act" means the Rehabilitation Act [29 USC 701 et seq.].

"Related factors" means those factors which are not directly attributable to the impediment to employment, but which

have impact on the potential for successful rehabilitation. They frequently become evident only from an assessment of the person's social, vocational, educational, and environmental circumstances.

"Section 504 Plan" is a plan designed as a protection for students with disabilities who may not be considered eligible for special education under IDEA in compliance with Section 504 of the Rehabilitation Act of 1973 as amended.

"Small business enterprises" means a small business operated by blind or other individuals with severe disabilities under the management and supervision of the state DRS. Such businesses include only those selling, manufacturing, processing, servicing, agricultural, and other activities which are suitable and practical for the effective utilization of the skills and aptitudes of individuals who are blind or individuals who have severe disabilities. Small business enterprise provides substantial gainful employment or self-employment commensurate with the time devoted by the operators to the business, the cost of establishing the business and other factors of an economic nature.

"Stabilization" means the period of time when job coach support is reduced to the long-term maintenance level while the individual retains employment, and personal satisfaction with the job, as well as employer satisfaction with the person's job performance. Stabilization must include appropriate individualized supports, including a minimum of two employee contacts and one employer contact per month.

"Substantial impediment to employment" means that a physical or mental disability (in the light of related medical, psychological, vocational, educational, cultural, social or environmental factors) that impedes an individual's occupational performance, by preventing his/her obtaining, retaining, or preparing for a gainful occupation consistent with his/her capacities and abilities.

"Supported employment" (SE) means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most severe disabilities who meet the eligibility criteria for supported employment. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness (see the definition for "transitional employment").

"Transitional employment" (TE) means, when referring to the Supported Employment Program, a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most severe disabilities due to mental illness.

"Transportation" is a service provided to assist with the costs of travel, including instruction in the use of public transportation vehicles and systems, which result from and are needed to support the individual's participation in diagnostic, evaluative, or other substantial and necessary VR services.

"Unpaid family worker" means a person who works without pay on a family farm or in a family business, operated by a family member who is related by blood or marriage.

"VR" means the Division of Vocational Rehabilitation, or the more general term vocational rehabilitation services, depending upon the context.

"VS" means the Division of Visual Services, or the more general term visual services, depending upon the context.

612:10-1-7. Purchase of services and goods for individuals with disabilities

(a) All Department authorizations are made in compliance with the state purchasing policy under legal authority of the Director or by an employee to whom the Director has delegated such authority. Services, other than diagnosis, must be in an approved Individualized Plan for Employment prior to authorization. All authorizations are to be issued prior to or simultaneously with the provision of the services. Verbal authorizations may be made when needed to ensure effective delivery of services. Verbal authorization must be followed immediately by the actual authorization. Separate authorizations for each fiscal year are required when a planned service extends beyond a single fiscal year. Rehabilitation professionals may not authorize fees for services in excess of those established by the Department unless approved by the Division Administrator. A prior written purchasing agreement is required before authorization can be made to any medical vendor or post-secondary school. Other nonmedical vendors will not require a prior written purchasing agreement unless stated otherwise in the DRS policy manual section(s) for that service. When a vendor has a prior written purchasing agreement with the Department, and required approvals have been obtained, authorization may be issued for consumer services directly to that vendor. All other consumer services will be purchased pursuant to the rules in (g) and (h) of this Section. However, a requisition may be submitted to the DRS Purchasing Section if, in the judgment of the responsible rehabilitation professional, the best interests of the consumer and/or the agency would be served by having the Purchasing Section handle the procurement. In either case, once items have been received and checked against the authorization, the appropriate DVR or DVS staff, in accordance with (g) and (h) of this Section, approves the claim, then forwards it to the DRS Financial Services Division. When a vendor does not abide by the authorization or written purchasing agreement or bills and accepts fees from the client in addition to those agreed upon, the rehabilitation professional will bring this to the immediate attention of the supervisor for action by the administration. The vendor will not be used for further rehabilitation services until agreement to discontinue the objectionable practice is reached.

(b) Since the Department is a state-federal agency, it does not pay sales, excise, or transportation taxes.

(c) All claims for medical and/or nonmedical client services must be filed on claim forms approved by the Department. When the provision of an authorization is fulfilled, payment for the authorized client services constitutes payment in full. The client will not have any financial liability other than the amount required of clients who must participate in the cost of the service provided. The individual is liable for services he/she arranged which were not planned and initiated under

the auspices of DRS. When DVR and DVS funds are used to supplement third party medical resources, participation cannot exceed the difference between the third-party payment and the Department's established schedule.

(d) The client must transfer, assign, or authorize payments to the Department of any and all claims against Health Insurance or Liability Insurance companies or other third parties, to the full extent of all payments for medical services made by the Department.

(e) The Department retains right and title to any tools, equipment, durable medical equipment, or other goods costing $500 or more purchased with DVR and DVS funds, until and unless such goods are released to the client. Upon delivery of any such goods to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(1) **Completion of Program:** Any tools, equipment or durable medical goods purchased for training or occupational purposes remain with the client after completion of the program of services if they can be used in the client's chosen vocation. If the client fails to complete the program of service, the counselor will make effort to reclaim the goods to transfer to another client.

(2) **Disposition at closure:** Case recording must reflect the disposition at the time of closure of tools, equipment, and goods provided the client. All occupational tools, equipment, and durable medical goods remain the property of the agency until released. If the client is not using the items, the counselor will pick them up if an economical savings to the agency will result, and if the transfer will not endanger the health or safety of the client.

(3) **Title Release:** Title on any tools, equipment or durable medical equipment purchased with DRS funds for training or occupational purposes will not be released to the client until the counselor has determined the client is ~~rehabilitated and~~ using the items as planned.

(f) When the rehabilitation professional determines an authorization or portion of an authorization will not be utilized, procedures to cancel the remaining services will be completed. Before the case is closed, all unliquidated authorizations must be canceled or accounted for to determine if a claim will be made against any outstanding authorization.

(g) Purchasing consumer goods or services, other than direct client payments, when there is no prior written purchasing agreement is basically a three step process. These steps include specifying the requirements for the goods or services, authorizing for the purchase, and receiving delivery of the goods or services. For audit purposes, no one person can perform more than one of these steps. A different person is required for:

(1) identifying the requirement for the purchase;

(2) placing the order; and

(3) accepting the material or service.

(h) When a prior written purchasing agreement for consumer goods or services, other than direct client payments, is not required, and the service or package of services to be obtained will cost the amount of the DCS authority order limit or less, the rehabilitation professional and client will jointly choose an appropriate vendor. The rehabilitation professional will then authorize for the planned services to the chosen vendor. When a prior written purchasing agreement for consumer services, other than direct client payments, is not required, and the service or package of services will cost more than the DCS authority order limit, the rehabilitation professional will follow rules in (1) through (7) of this Subsection.

(1) The rehabilitation professional will obtain specialist recommendations for purchase requirements and approvals in accordance with agency policy.

(2) The participation of the client, or the client's authorized representative, will be obtained in deciding upon at least three vendors to be contacted by the rehabilitation professional to obtain bids for the goods or services. The rehabilitation professional will review available vendor information with the client, or client's authorized representative, to jointly determine which vendor(s) can best meet the needs of the client in terms of product and service function, quality, and vendor accessibility.

(3) At least three vendors offering the goods or services will be contacted to obtain bids. To expedite planning and service delivery, bids may be obtained verbally. Upon request, contacted vendors will be afforded at least 24 hours in which to prepare and submit the verbal bid. The rehabilitation professional will ensure that all bids are submitted in writing for the same or comparable items, and will document the bids received by using the Vendor Bid Documentation Form.

(4) The rehabilitation professional will issue the appropriate authorization and claim to the vendor submitting the lowest and best bid. If the rehabilitation professional managing the case is also the recognized specialist who identified the purchase requirements, then the supervisor will issue the appropriate authorization. Authorization may be issued to a vendor not submitting the lowest bid only with strong documentation that the selected vendor can best meet the needs of the client. When the bid is in excess of $~~10,000.00~~5,000.00 the successful bidder will sign a non-collusion statement (to be sent with the claim), which will be maintained in the case service record.

(5) In the case of a vehicle modification or housing modification, upon completion of the authorized services, the counselor will contact the AT Specialist to schedule inspection of the work in accordance with 612:10-7-220 and 612:10-11-38. The AT Specialist will complete the "Assistive Technology Inspection Report" verifying the modification conforms to acceptable standards and the work is satisfactory.

(6) Upon delivery of the goods or services in accordance with the IPE and authorization, a rehabilitation staff person other than the specialist who specified the purchase requirements and the rehabilitation professional who authorized the purchase will accept delivery, verify that goods received match the vendor invoice, sign the appropriate claim form, sign and attach the invoice and forward them to the DRS Financial Services Division.

(7) Upon delivery of any goods costing $500 or more to the client, a Receipt for Equipment and Title Agreement must be completed and approved.

(8) Itemized documentation will be in the case record on all orders costing less than $500 and the client will acknowledge their receipt. (For example, signing and dating the packaging slip, vendor's invoice, or typed list of goods.)

(9) Returned or repossessed items must be documented on for "Receipt for Equipment and Title Agreement" and the final disposition noted in Case Narrative entry.

(i) Program Managers will review case records when submitted for approvals to ensure that purchases are being awarded in a manner that ensures competition and client participation within the scope of DRS and applicable fiscal rules. At least once each fiscal year a random selection of case records will be reviewed by the DRS Central/Departmental Services Unit to monitor compliance with DRS and applicable fiscal rules. If a Program Manager has reason to believe that a rehabilitation professional is not making a good faith effort to award purchases in a competitive manner and in accordance with agency policy, a fiscal audit of the entire caseload will be requested to determine the appropriate action to take.

(j) Pursuant to 74 O.S. 85.44A, any goods or services required under a court order shall be purchased in accordance with DRS fiscal rules.

SUBCHAPTER 7. VOCATIONAL REHABILITATION AND VISUAL SERVICES

PART 3. CASE PROCESSING REQUIREMENTS

612:10-7-24.1. Basic eligibility requirements for vocational rehabilitation services

(a) An individual is eligible for vocational rehabilitation services under the Rehabilitation Act through the State Department of Rehabilitation Services if the individual:

(1) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment;

(2) is determined by a qualified vocational rehabilitation counselor to require vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment; and

(3) can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) The agency presumes that an applicant with a physical or mental impairment that constitutes or results in a substantial impediment to employment can benefit from vocational rehabilitation services in terms of an employment outcome, unless the agency demonstrates, based on clear and convincing evidence, that the individual is incapable of benefiting from rehabilitation services due to the severity of the individual's disability.

(c) An individual who has a disability or is blind as determined pursuant to Titles II (federal old age, survivors, and disability insurance benefits) or XVI (SSI)shall be:

(1) considered to have a significant disability under the order of selection; and

(2) presumed to be eligible for vocational rehabilitation services, (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless clear and convincing evidence demonstrates that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the individual's disability.

(d) Eligibility requirements shall be applied without regard to:

(1) duration of residence in the state,

(2) type of disability,

(3) age, except that in serving eligible individuals below working age, the client must be expected to reach working age by the time the IPE is completed, and DRS will not provide services that are the responsibility of the public school system.

(4) gender, race, color or national origin,

(5) type of expected employment outcome,

(6) source of referral, or

(7) the particular service needs or anticipated cost of services required by an applicant or applicant's family.

(e) **Disabled veterans.** Disabled veterans are eligible for vocational rehabilitation services on the same basis as other individuals with disabilities subject to the following restrictions:

(1) Disabled veterans are not provided services which can be secured from the Veterans Administration (VA), unless use of VA services will cause a substantial delay of services.

(2) Veterans receiving additional benefits under the G. I. Bill or the War Orphan Act may be provided services if such services do not duplicate those being received from the VA.

(f) **Applicants who are employed.** Employed persons who meet basic eligibility requirements may be provided vocational rehabilitation services when the employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, interests and capabilities.

(g) **Citizenship.** Participation in the VR program is available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees and parolees, and other immigrants authorized to work in the United States.

(h) **Criteria.** Some conditions have unique criteria that must be considered when determining eligibility.

(1) **Alcoholism/Drugs.** Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a psychiatrist, psychologist, medical doctor or certified substance abuse counselor. Clients must be willing to undergo random alcohol/drug screening. DRS does not pay for detoxification or replacement drug treatment. Documentation from qualified Drug and Alcohol treatment professionals indicating that the client is presently substance-free, maintaining sobriety, and actively participating in a treatment or maintenance program if recommended by the treating

professional must be filed in the case record upon IPE development.

(2) **Allergies/Asthma.** Allergies/asthmatic conditions that require continuous or intermittent medical intervention and result in a substantial impediment to employment will be considered eligible for services.

(3) **Deafness and Hearing Loss.** The rehabilitation professional will base eligibility determination upon one of the measurement methods listed below. The case record must document the method chosen provides the most accurate evaluation of functional hearing level for the individual.

(A) **Eligibility criteria.** Eligibility criteria for each method of measurement are listed in (i) through (iv) of this Subsection. An individual will also be considered to have a qualifying disability when documentation indicates the hearing loss is progressive and the progression is substantial enough to result in an impediment to employment.

(i) **Average hearing loss.** Average hearing loss, which is determined by computing average of the pure tone thresholds for each ear at 1000Hz, 2000Hz, 3000Hz and 4000Hz. An individual is considered to have a qualifying disability based upon average hearing loss when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 15 dB; or

(II) The hearing loss in the better ear is 30 dB or greater.

(ii) **Speech recognition threshold (SRT).** An individual is considered to have a qualifying disability when:

(I) the speech reception threshold in one ear is 91 dB or greater and is at least 15 dB in the better ear; or

(II) the speech reception threshold in the better ear is 30 dB or greater.

(iii) **Speech discrimination or word recognition score.** An individual is considered to have a qualifying disability when the speech discrimination or word recognition score is 70% or less.

(iv) **Articulation index.** An individual is considered to have a qualifying disability when the articulation index is 70% or less.

(B) **Severity of Hearing Loss.** All individuals who qualify as having a severe hearing loss will be referred to a Rehabilitation Counselor for the Deaf and Hard of Hearing (RCD). Relevant information provided will include copies of the initial interview narrative recording, medical information, eligibility data entry form, Individualized Plan for Employment, pertinent copies of case narratives and DRS application form. On receipt of a referral, the RCD will contact the client and make a determination of potential for Deaf and Hard of Hearing services. The referring counselor will be informed in writing of the RCD's findings.

(i) **Severe Hearing Loss.** Average hearing loss, as calculated above, is considered severe when:

(I) The hearing loss in one ear is profound (91 dB or greater) and the hearing loss in the better ear is at least 31 dB; or

(II) The hearing loss in each ear is 55 dB or greater.

(ii) **Severe Speech Recognition Threshold (SRT).** An individual is considered to have severe disability when;

(I) The SRT in one ear is 91 dB or greater and the SRT in the better ear is at least 31 dB; or

(II) The SRT in each ear is 55 dB or greater.

(iii) **Severe Speech Discrimination or word recognition score.** An individual is considered to have a severe disability when the speech discrimination or word recognition score is 59% or less.

(4) **Diabetes:** The individual must require prescribed medication to control the condition. Those persons whose diabetes is controlled by diet and exercise alone or whose condition does not result in a substantial impediment to employment will not be considered eligible. Eligible clients will be required to undergo a visual exam by a licensed ophthalmologist at least once a year. All insulin dependent diabetics are required to attend diabetic education training as part of their IPE. This can be provided by a consumer's personal physician, in coordination with the VR specialist. If diabetic education is provided, a separate intermediate objective addressing this service must be included on the IPE.

(5) **Facial and Disfigurement Conditions.** When these conditions result in an impediment to employment an individual may be eligible for VR services.

(6) **Learning Disabilities.** ~~Individuals must meet **one** of the following three criteria to~~An individual may be identified as learning disabled:

(A) ~~Have~~When there is a marked discrepancy between verbal and performance intellectual level~~;~~ or

~~(B) Be diagnosed or identified as having a specific learning disability from the local educational system; or~~

(~~C~~B) When the individual's achievement on individually administered, standardized ~~test~~tests in reading, mathematics or written expression is substantially below that expected for age, schooling and level of intelligence (DSM IV).

(7) **Mental Disorders.** Treatment must be incorporated as a service in the IPE for individuals with a mental disorder.

(8) **Mental Retardation.** To be eligible, individuals having an I.Q. of 69 or below and substantially limited adaptive functioning, as measured by an individual intelligence test, will be considered to have a substantial disability. Individuals eligible under IDEA with an I.Q. level higher than 69 may be considered to have a substantial impairment provided the documentation used by the

school in determining eligibility under IDEA, in the counselor's judgment, confirms the individual is functioning in the mentally retarded range of ability. Individuals not enrolled in public school special education classes with an I.Q. higher than 69 may be considered to have a substantial impairment provided appropriate documentation confirms the individual is functioning in the mentally retarded range of ability.

(9) **Height.** To be eligible, a person's stature must constitute or result in a substantial impediment to employment.

(10) **Obesity.** To be eligible, a person must be considered obese according to a recognized medical classification protocol and the impairment must constitute or result in a substantial impediment to employment. Some type of weight loss plan or treatment for obesity must be included as a service in the IPE.

(11) **Visual.** The individual must be found to have at least a 25% loss of total visual efficiency with best correction, or there must be evidence the condition is progressive and will soon reach the visual loss described above. "Best correction" refers to the use of standard eyeglasses or contact lenses, and does not include use of bioptic telescopic systems or any specialized lenses which cannot be worn by the individual on a sustained basis. Any one or all of the following factors may be used to determine whether a 25% loss of total efficiency exists.

(A) **Central visual acuity (Snellen method or equivalent).** Acuity of 20/60 or less in the better eye after best correction (in the case of difference of acuity between reading and distance use the greater loss).

(B) **Loss of depth perception or stereopsis.**

(i) **Eligibility on the basis of depth perception loss.** When defining eligibility based on depth perception alone, it is generally accepted a total loss of depth perception would not constitute a 25% loss of visual efficiency. Other factors to consider include: Is the client's loss of depth perception acute? Did the client recently lose his or her depth perception? Did the client's past vocational experience require good depth perception? If the client is currently working, does his/her present vocation require good depth perception? After considering these factors the counselor will determine if there are functional limitations to the extent the individual would be prevented from obtaining, retaining or preparing for employment.

(ii) **Eligibility based on loss of stereopsis.** Stereopsis is defined as the blending into one-picture two images of an object seen from slightly different points of view so as to produce the impression of relief and solidity. This type of loss usually results from suppression of vision in one eye due to alternating exotropia, esotropia, hypertropia or a difference in the refractive power of the two eyes so great that separate images cannot be fused. When determining eligibility based on lack of stereopsis the counselor will take into account most of the factors used in determining eligibility based on loss of depth perception. One major difference is stereopsis cannot be learned. In other words, if an individual does not have binocular vision, it is impossible for the individual to have stereopsis. From a functional standpoint, stereopsis is considerably different from depth perception. The individual can still do many jobs with various degrees of depth perception yet these same jobs may have certain steps that require acute stereopsis. Thus an employee losing the stereopsis part of his visual function would be at risk for injuring himself or other workers or might be considered as a target for termination.

(iii) **Limited peripheral vision.** This is restriction of visual fields by 25% or more as documented by a formal visual field examination. The examination should report the qualitative percentage of visual field loss and/or remaining percentage of visual efficiency.

(iv) **Diplopia (Double Vision).** There are different degrees of double vision. The type of double vision most disabling is the type that manifests itself in the primary direction of gaze.

(v) **Aphakia.** In cases of binocular Aphakia the central visual efficiency of the better eye will be accepted at 75% of its value (25% loss of visual efficiency) and in monocular Aphakia the central visual efficiency will be accepted at 50% of its value (50% loss of visual efficiency). Individuals with intraocular lens implants are not considered to have a visual disability as a result of an aphakic condition.

(vi) **Color deficiency.** When total absence of color discrimination or red-green deficiency exists it will be considered a disability.

(12) **Re-evaluation.** Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

612:10-7-25.1. Order of selection

(a) **Need for order of selection.** The Department, in consultation with the Oklahoma Rehabilitation Council, has determined, due to budgetary constraints or other reasoned limitations, that it cannot serve all individuals who are determined eligible for DVR and DVS services. The Department consults with the Oklahoma Rehabilitation Council regarding the:

(1) need to establish an order of selection, including any re-evaluation of the need;

(2) priority categories of the particular order of selection;

(3) criteria for determining individuals with the most significant disabilities; and

(4) administration of the order of selection.

(b) **Priority groups.** It is the policy of DRS to provide vocational rehabilitation services to eligible individuals under

an order of selection. Under the order of selection, the Department has established three priority groups on the basis of serving first those with the most significant disabilities. Every individual determined to be eligible for DVR and DVS services is placed in the appropriate priority group based upon the documentation used to determine eligibility and/or vocational rehabilitation needs. Selection and placement in a priority group is based solely upon the significance of the eligible individual's disability, and is not based upon the type of disability, geographical area in which the individual lives, projected type of vocational outcome, age, sex, race, color, creed, religion, or national origin of the individual. The priority groups are:

(1) **Priority Group 1.** Eligible individuals with the most significant barrier to employment. A most significant barrier is one that includes a mental or physical disability resulting in serious limitations in three or more functional capacities and ~~requiring~~can be expected to require multiple services over an extended period of time.

(2) **Priority Group 2.** Eligible individuals with significant barriers resulting in serious limitations in at least one, but not more than, two functional capacities and ~~requiring~~can be expected to require multiple services over an extended period of time.

(3) **Priority Group 3.** Eligible individuals with disabilities not meeting the definition of individual with a significant barrier.

(c) **Implementation.** Prior to the start of each fiscal quarter, or when circumstances require, the DRS Director will determine in which priority groups new Individualized Plans for Employment will be written and initiated. The Director may restrict the writing and initiation of new Individualized Plans for Employment within a priority group to cases having eligibility dates falling on or before a specified date providing that all consumers in higher priority groups are being served. Considerations in making this determination will include, but not be limited to, the projected outcomes, service goals, expenditures, and resources available for each priority group. Projected costs and resources for each priority group will be based upon costs of current Individualized Plans for Employment, anticipated referrals, availability of financial resources, and adequacy of staffing levels. The Director will implement actions under the order of selection through written notice to DVR and DVS staff. The written notice will specify the implementation date of the action and direct DVR and DVS staff on how to handle cases by priority group and application date. DVR and DVS staff will inform each eligible individual on their caseloads:

(1) of the priority groups in the order of selection;

(2) of the individual's assignment to a priority group; and

(3) of the individual's right to appeal that assignment.

(d) **Closing and opening priority groups.** When all or part of a priority group is closed, designated cases within that priority group without a written IPE will be placed on a waiting list after the individual has been determined to be eligible. No IPE will be written for cases on the waiting list. Staff will continue to take applications, diagnose and evaluate all applicants to determine eligibility and vocational rehabilitation needs, find the individual eligible when documentation supports such a decision, then place each eligible individual's case in the appropriate priority group. If an eligible individual is placed in a closed priority group, his or her case will go on the waiting list and no IPE will be written or initiated. The DRS Director will notify DVR and DVS staff in writing when all or part of a closed priority group is opened. When this directive includes new applicants who are found eligible, individuals already on the waiting list within that same priority group will be given priority over new applicants. When all or part of closed priority groups are opened, staff will contact individuals on the waiting list to develop and implement their Individualized Plans for Employment using the priorities in Paragraphs (1) - (3) of this Subsection:

(1) contact individuals within the highest open priority group first, Most Significant being the highest of all priority groups;

(2) within each opened priority group, staff will contact individuals on the waiting list in order of application date, earliest application date first; then

(3) staff will contact individuals whose cases will remain on the waiting list to explain how their cases will be handled.

(e) **Continuity of services.** Any individual with an IPE that existed prior to the date all or part of that individual's priority group was closed will continue to receive services as planned. Such an IPE may be amended if the changes are necessary for the individual to continue progress toward achieving an appropriate employment outcome, or are otherwise necessary within policy. Persons requiring post employment services will also be provided the necessary services regardless of priority group assignment.

(f) **Information and referral services.** Information and referral services will remain available to eligible individuals who are not in an open priority group. These individuals will be given information and guidance, using appropriate modes of communication, to assist such individuals in preparing for, securing, retaining or regaining employment, and will be appropriately referred to Federal and State programs (other than the vocational rehabilitation program) including other components of the statewide workforce investment system in the state. No IPE will be written to provide such services to these individuals.

PART 9. ACTIONS REQUIRING REVIEW AND APPROVAL

612:10-7-87. Actions requiring supervisor's approval

Actions requiring supervisory approval include:

(1) All actions of a newly employed counselor/teacher.

(2) All IPE's or amendments when the total of the planned DVR and DVS expenditures for the entire case exceed $25,000.

(3) All case closures in which an IPE was developed and services initiated.

(4) Transfer of cases from one counselor/teacher caseload to another outside the sending supervisor's unit

(signed by the supervisor of the sending counselor or teacher).

(5) All IPE's which include purchase of physical or mental restoration services, prescription drugs or prescribed medical supplies lasting more than three months.

(6) Small Business ~~plan~~ plans with a cost to the agency in excess of $10,000.00.

(7) Vehicle or home modifications over the DCS authority order limit and housing modifications involving structural modifications.

(8) Vehicle repairs that exceed $1,000.00 for the life of a case.

(9) Dental services with a projected cost over $5,000.00.

PART 11. PHYSICAL AND MENTAL RESTORATION SERVICES

612:10-7-98. General guidelines for physical and mental restoration services

(a) To the extent that assistance is not readily available from a source other than DVR or DVS, diagnosis and treatment of physical and mental impairments may be provided to assist the individual with a disability in preparing for, securing, retaining or regaining employment. Physical or mental restoration services are provided only when the condition is stable, or slowly progressive. A slowly progressive condition is one in which the client's functional capacity is not expected to diminish so rapidly as to prevent successful completion of vocational rehabilitation services, and/or employment for a reasonable period of time. The individual is liable for services he or she arranged which were not planned and initiated under the auspices of DVR and DVS. DVR and DVS will not pay for hospitalization or treatment occurring prior to initiation of an Individualized Plan for Employment (IPE). DVR and DVS will not pay for emergency hospitalization or treatment needed at the time of referral. However, diagnostic examinations or information may be paid from DVR and DVS funds for use in eligibility determination, priority group placement, or determination of vocational rehabilitation needs. Physical and/or mental restoration services will be purchased only from licensed or board certified health professionals unless otherwise specified in DRS policy. Payment will be made in accordance with the established fee schedule of the Department.

(b) Temporary conditions with sudden onset do not fall within the definition of impairment for eligibility purposes. Emergency treatment of remediable conditions will not be purchased by DVR and DVS except under intercurrent illness policy.When the staff is in doubt as to the effect of such a condition upon the outcome of the IPE objectives, a medical consultation may be requested.

(c) DVR and DVS do not provide long-term or ongoing physical or psychological treatment. DVR and DVS funds cannot be used to initiate treatment that is reasonably anticipated to last more than three months unless supervisory approval has been obtained for a three month extension. Additional three month extensions may be approved if the client maintains reasonable progress toward achieving the vocational goal. Persons needing long-term or ongoing treatment are to be referred to other medical assistance sources if available.

(d) Payment from DVR and DVS funds may be planned and authorized only after applicable third party pay sources provide verification of the expense they will cover, and not cover, associated with the physical or mental restoration services in question. When DVR and DVS funds are used to supplement a third party pay source, planned services and the authorization will be limited to those expenses that fall within the scope of the program and that do not exceed the difference between what the third party pay source will pay and the Department's established payment schedule.

(e) Individuals with chronic disabilities that can be removed with little or no residual limitations will not be eligible for purchase of services other than those related to the required treatment.

(f) Physical and mental restoration services may include but are not limited to:

(1) Braces and orthotic devices.

(2) Chiropractic services. A chiropractor providing treatment must be duly licensed to practice his profession in Oklahoma, have a current provider/vendor agreement with DRS, and following evaluation of the client's needs, must provide a treatment plan with goals, time frames and the estimated number of treatments required to meet the goals. Treatment may not be extended beyond three months unless progress toward treatment goals can be determined.

(3) Dental services. Dental services may be provided to treat or correct dental conditions that constitute an impediment to employment or participation in the rehabilitation process, produce health problems or aggravate an existing disability. Dental services with a projected cost over $5,000.00 require review by the DRS dental consultant and supervisory approval.

(4) Dialysis and treatment for end-stage-renal-disease**.** DVR and DVS may assist with the cost of Medicare deductible, co-insurance, and services not covered by Medicare if documentation states other resources are not available and the client is actively participating in an IPE with treatment as part of the plan. Requests for kidney transplants must be approved by the medical consultant.

(5) Prescription drugs and prescribed medical supplies.Prescription drugs and/or prescribed medical supplies may be purchased when required for proper diagnosis, for post-operative treatment, or to stabilize a documented disability. The need for the drugs and/or medical supplies must be documented in a physician's report. Payment will be made for generic type drugs unless the physician specifically requests a brand name drug.

(6) Hearing aids and audiological services.

(7) Hospitalization when recommended by a physician and the client is to receive medical treatment or surgery. Hospitalization may also be authorized for diagnostic services upon recommendation of a physician.

(8) Treatment for intercurrent illness. Intercurrent illness is an illness or injury which occurs during the

course of an individual's vocational rehabilitation and, if not treated, will complicate or significantly delay achievement of the client's employment outcome. DVR and DVS will purchase treatment for intercurrent illness or injuries if the client is not covered by health insurance or eligible for comparable services and benefits, or when the provision of services through comparable services and benefits would significantly interrupt or delay treatment for an individual at extreme medical risk, jeopardize a job placement or impair the individual's progress in achieving the planned employment outcome.

(9) Laboratory work and x-rays if required by the physician to complete his examination or in conjunction with diagnosis or treatment.

(10) Low vision services.

(11) Medical examinations, when necessary to determine eligibility, achieve a goal in the IPE or when related to an intercurrent illness.

(12) Nursing services can be provided for a client who is convalescing from physical restoration services if recommended by the doctor of treatment. Either Registered Nurses or Licensed Practical Nurses may be used to provide this service when a current medical vendor agreement is on file with the Department. Volunteers may be used if less technical care is needed and if approved by the client's physician.

(13) Physical and occupational therapy may be provided on either an in-hospital or outpatient basis if recommended by the attending physician.

(14) Post-operative care of cataract patients.

(15) Prosthetic eyes, glasses and other optical aids.

(A) Glasses and other visual aids and services may be prescribed or provided by either an ophthalmologist or an optometrist. Other optical aids recommended by optical aid clinics are purchased upon the recommendation of the specialist(s) in one or more such clinics. Prosthetic eyes are provided, upon the recommendation of an ophthalmologist.

(B) Lenses and frames for glasses purchased by DRS will be authorized at fee schedule prices. The vendor may add a service charge not to exceed the established fee. An additional code and fee may be added for tinting if it has been prescribed by the physician or optometrist that performed the eye examination.

(C) The fee that has been established for frames will only cover the cost of plain sturdy frames. Clients do not have the option of selecting more expensive frames and paying the difference between the vendor's price and the amount authorized. If the vendor accepts payment from the client or a representative of the client and also files a claim with the Department for the same services, a violation of the Provider Agreement has occurred and the vendor would be subject to sanctions.

(D) If a client selects special frames and has sufficient resources to purchase them, the frames should not be included on the authorization and the client would be responsible for the entire cost of the frames.

(16) Prosthetic limbs.

(A) Prosthetic limbs may be provided if the prosthesis is recommended by a physician. The client who has successfully worn a prosthesis will not be required to see an orthopedist or physiatrist, or attend an amputee clinic unless some other disorder is apparent.

(B) An individual who has never worn a prosthesis must be seen by a physician before the prosthesis is provided. The client must agree to training in its use. Gait training is considered Personal Adjustment Training and does not require client participation in cost. However, physical therapists providing the training are recognized as medical vendors and require authorizations completed on a Medical Service Authorization.

(C) Persons with multiple amputations must have the special examination and training.

(D) The counselor may authorize for a prescribed standard prosthesis without further review. The choice of prosthesis must be closely related to its intended use in a work setting, or in relation to reasonable independent living goals. Non-standard prostheses (i.e., myoelectric) will not be purchased with DRS funds unless medically justified and/or required for a specific employment, or independent living, outcome. When a prosthesis other than a standard prosthesis is prescribed the counselor will request a consultation from the appropriate medical consultant. Justification for the non-standard prosthesis must be documented in the case record.

(17) Psychiatric and psychological treatment.

(A) Psychotherapy may be provided for emotional conditions which may be expected to respond within a reasonable period of time. Psychotherapy can be provided only by the sources in (1) - (5) of this Subsection.

(i) Psychiatrists certified by the American Board of Psychiatry and Neurology or completed the required training and are "Board Qualified", or who have spent a major portion of their time in a particular specialty for at least two years and are recognized as specialists in the local community (same criteria as applied to other medical specialists).

(ii) Licensed Doctors of Medicine or Doctors of Osteopathy who have received specific training for and are experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(iii) Psychologists with a doctorate in clinical or counseling psychology who hold a valid license to practice psychology.

(iv) Psychologists with a doctorate in clinical or counseling psychology who are employed by governmental agencies exempt from the licensing law.

(v) Other licensed clinicians or those employed by governmental agencies who have received administrative approval to provide this treatment service.

(B) Upon receipt of a written report from the therapist, the supervisor may approve additional three-month periods of therapy. Clients needing long-term or ongoing psychiatric or psychological treatment will be referred to the appropriate community mental health center.

(C) Personal Adjustment Counseling may be provided for those persons with emotional conditions who may benefit from counseling to bring about a more adequate social adjustment, alleviate superficial anxiety, and to create more effective interpersonal relationships. Personal Adjustment Counseling may be provided by: those individuals listed in (17) (A) of this Subsection.

(18) Speech therapy/training as recommended in a speech evaluation. Speech therapy, although provided by recognized speech therapists, is considered Personal Adjustment training and is not based on financial status. The providers of speech therapy are classified as medical vendors.

(19) Surgery and medical treatment.

(A) Surgery and complex or unusual medical treatment may be provided when recommended by a specialist. Medical consultant approval will be obtained prior to planning and authorizing a diagnostic procedure which could lead to immediate surgical treatment. The medical consultant will give conditional approval for the possible surgery if deemed necessary. Normal post-operative care is an integral part of the surgery; therefore, no post-operative charges are to be paid above the approved surgical fee.

(B) Specified outpatient surgical services are approved for payment when provided in qualified outpatient surgical facilities. Qualified facilities include Medicare certified free standing ambulatory surgical centers, Medicare certified hospitals offering outpatient surgical services, and hospitals which have an agreement with DRS.

(C) The counselor will advise the client he/she may be liable for any balance due when payment by private insurance exceeds the Department allowable rate.

(20) Weight loss treatment. A weight loss plan or treatment are included as a service in the IPE for individuals who are eligible on the basis of obesity. A licensed dietician or a physician skilled in weight reduction must monitor any treatment program authorized by the agency. Surgery for weight loss is not provided unless medically recommended as treatment for morbid obesity and approved by the DRS medical consultant.

(21) Wheelchairs and other durable medical equipment when prescribed by a physician or recommended by an occupational therapist, physical therapist, assistive technology specialist or person with equivalent qualifications. Power mobility devices may be purchased for individuals when necessary to assist the client in achieving IPE goals.

(A) The client, and/or client's authorized representative, will participate in choosing from which vendor the wheelchair or durable medical equipment will be purchased. Wheelchairs and other durable medical equipment will be authorized at the agency approved fee.

(B) The client, or client's family or authorized representative as appropriate, is responsible for maintaining wheelchairs or other durable medical equipment in good working order. DVR and DVS will pay for repairs to wheelchairs or other durable medical equipment during the life of the case unless there is clear evidence the equipment has been damaged due to client abuse or neglect. An agency-purchased wheelchair will be returned to the agency if the client becomes unable to use it.

(C) Wheelchair rental may be authorized for a period not to exceed six months when necessary to assist the client with mobility. An exception can be made if it is documented that rental is more cost effective than purchase.

PART 23. SELF-EMPLOYMENT PROGRAMS AND OTHER SERVICES

612:10-7-230.4. Agency financial contribution to self-employment/ purchasing

(a) The agency may provide some financial assistance toward self-employment plans that have met the requirements as specified in policy. The counselor will determine the client's financial status and any required financial participation by the client. ~~The agency's contribution will not exceed 25% of any approved plan request above $10,000.00.~~ The client's contribution may come from personal resources, property, loans, PASS plan funds or small business start-up grants from other assistance programs.

(b) Any required client financial participation is applied to the cost of planned services

(c) ~~Self-employment plans exceeding~~The agency's contribution to a self-employment plan will not exceed $10,000.00 ~~will require~~without supervisory approval. ~~Any request for assistance that will include agency funding over $15,000.00, will be submitted to the Field Coordinator for review and approval or disapproval.~~

(d) Items that the agency will not approve for funding include:

(1) Construction or purchase of real estate.

(2) Businesses that are speculative in nature such as stocks, bonds or other investments or considered speculative by the Better Business Bureau.

(3) Businesses that are organized as not for profit.

(4) Businesses organized as hobbies

(5) Purchase of vehicles

(6) Refinancing of existing debt.

(7) Business plans that are not developed as the primary source of support.

(8) A business endeavor that does not have an agency approved business plan.

(e) **Purchases and support services.** All Agency purchases for a plan with a goal of self-employment will be in accordance with established purchasing policy regarding the competitive bid process and referrals to the State Office Purchasing Unit. Any requests for assistance with maintenance or transportation will be required to meet established policy guidelines for these support services.

SUBCHAPTER 13. SPECIAL SERVICES FOR THE DEAF AND HARD OF HEARING

PART 1. SERVICE PROGRAMS

612:10-13-4. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders [REVOKED]

~~This section applies to individuals with deafness, hard of hearing, deaf blindness or communicative disorders who require access to telecommunication services and devices to enhance communication and contribute to the individual's residential and personal safety. The DRS division providing services under this section is authorized to share the case information of a service applicant or recipient with other DRS staff serving the same client.~~

~~(1) **Telecommunication and safety devices.** Consumers may be provided telecommunications equipment, personal or home safety devices, or other specialized equipment determined by individual need. The recipient of services may be asked to participate in the cost of the services provided based upon individual or family income in accordance with (d) of this Section. Equipment will not be replaced before five (5) years have lapsed unless determined by DRS staff to be malfunctioning and not caused by consumer misuse or neglect. Appeals of this waiting period must be presented in writing for administrative review. DRS staff will consider possible changes in disability. The consumer is responsible for the equipment when the manufacturer's warranty expires prior to the five (5) year period. DRS will provide surge protection which must be used. Failure to use surge protection will be considered consumer neglect. Additional requirements are stated in (A) through (E) of this Subsection.~~

~~(A) All recipients of equipment must be residents of the state.~~

~~(B) Medical or audiological verification will be required to support the applicant's diagnosis of a hearing loss to the extent the applicant cannot use the telephone, or communicative disorders to the extent speech is unintelligible. If verification is not available, DRS will authorize the initial audiological evaluation. Individuals with deaf blindness will be referred to the deaf blind program to determine equipment needs. Documentation of legal blindness or inability to read standard print is required.~~

~~(C) Parents or other legal guardians must assume responsibility for the telecommunication devices assigned to clients under 18 years of age.~~

~~(D) The guidelines in (i) - (iv) of this Paragraph will be used in determining the priority of service.~~

~~(i) Qualified persons with disabilities living alone.~~

~~(ii) Qualified households where all residents have substantial disabilities.~~

~~(iii) Qualified households where two or more residents have substantial disabilities.~~

~~(iv) Qualified households where one of the residents has a substantial disability.~~

~~(E) To apply for assistance, an individual must complete an application and registration using the Application for the Equipment Distribution Program form. Applications may be obtained by contacting any DRS office. Equipment may be mailed to the closest DRS office for the consumer to pick up. If not picked up within 30 days, the equipment will be returned to DRS inventory to be issued to the next consumer on the waiting list.~~

~~(2) **Hearing aids for senior citizens.** Hearing aids may be purchased for individuals who are sixty (60) years of age or older and have a hearing loss of 35 decibels or greater in the better ear. The level of hearing loss is to be determined by a vendor audiologist selected by the applicant and having a current contract to provide services under this program. One hearing aid willbe purchased per person with the exception of (E) below. All services and equipment purchased will be paid at the contracted rate. The individual may be required to participate in the cost of services in the form of a co-payment as determined under (3) of this Section. Procedures for providing hearing aids under this program are presented in (A) through (D)of this Section.~~

~~(A) **Application.** An applicant will complete the Application for the Equipment Distribution Program and submit the completed application along with proof of income to the Oklahoma School for the Dear, DRS.~~

~~(B) **Eligibility determination and authorization of services.** Upon receipt of a completed application, DRS will determine the amount of any required co payment in accordance with (3) of this Section. Staff will authorize an audiological evaluation to the preferred vendor designated on the application form. The referral source and applicant will be notified of the authorization and the amount of any required co payment to be made to the DRS/235 Fund. The report of audiological evaluation is sent to the Oklahoma School for the Deaf. If the result is a hearing~~

~~loss of 35 decibels in the better ear, staff will issue an authorization for a hearing aid and appropriate ancillary services and devices in accordance with the vendor contract. The level of hearing loss will be determined averaging the readings reported at the 1000 Hz, 2000 Hz, 3000 HZ and 4000 HZ frequency ranges.~~

~~(C) **Appointments and transportation.** DRS staff will notify the individual of any authorizations for evaluation or services. This notification will instruct the individual to contact his/her selected vendor for an appointment.~~

~~(D) **Disposal of unused hearing aids.** Service recipients will be encouraged to return hearing aids to DRS if no longer needed.~~

~~(E) **Applicants who have hearing loss and are legally blind.** If a hearing aid applicant meets the adiological criteria for (B) above, and is also legally blind, they can be approved to receive two hearing aids. Eligibility will be determined by referring the application to the Deaf Blind specialist. Processing of the application should not be delayed by referral to the Deaf-blind specialist.~~

~~(3) **Client participation in cost of services.** Allowable income levels for these services will be 200% of the current income guidelines for food stamps. The monthly earnings, evaluated annually, that fall above the income guidelines create a surplus. Ten percent (10%) of that surplus will be the consumer's participation in the cost of services payable to DRS/Fund 235. If the surplus exceeds the service cost DRS will not participate.~~

~~(4) **Disposal of unused telecommunications equipment and assistive communication devices.** As with hearing aids, service recipients will be encouraged to return useable equipment to DRS if no longer needed.~~

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TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES CHAPTER 20. SPECIAL SCHOOLS

[OAR Docket #12-625]

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PERMANENT final adoption
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Subchapter 2. Contracted Instructional Personnel
612:20-2-5. Contracted instructional personnel [AMENDED]
612:20-2-13. Dismissal/Nonreemployment Hearing [AMENDED]
612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment [AMENDED]
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612:20-9-1. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders [NEW]
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Changes to Chapter 20 include updating and clarifying language; removing Trial De Novo per legislative actions and moving policy from VR to OSD where the program is now located.
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, 2012:

SUBCHAPTER 2. CONTRACTED INSTRUCTIONAL PERSONNEL

612:20-2-5. Contracted instructional personnel

(a) No person will be permitted to teach at either of the special schools without a written contract, except as provided for substitute teachers and teachers of classes in adult education. Each entry-year teacher must have completed the requirements of the State Department of Education for that position. The Superintendent and Director of DRS will employ under contract qualified instructional personnel for and in the name of the Department. The original of the contract will be maintained by the school. Two copies of the contract will be sent to the Human Resources Unit; one to be maintained in the individual's personnel file and the other to be maintained by Payroll. A copy will be retained by the employee.

(b) No instructional personnel employed by the Department may contract with any school district during the same time and period covered by the contract with the special school without express approval from the Superintendent of that special school. Section 105D of the Oklahoma School Law shall be followed.

(c) Each contracted instructional staff person will be considered as employed on a continuing contract basis unless notified in writing by registered or certified mail that re-employment for the next school year has not been recommended. Unless such notice is issued before ~~April 10~~June 1st, a contracted instructional staff person's contract will be automatically renewed for the next academic year.

(d) Each contracted instructional staff person will serve a probationary period of three successive years and, unless already completed, participate in the Entry-year Teacher Program. Upon successful completion of the probationary period, the individual becomes career contracted instructional personnel. Career contracted instructional personnel have a right to continued employment, not to any particular position. Career contracted instructional personnel have priority for contract renewal over non-career contracted instructional personnel in cases of reductions-in-force when both individuals are certified in the same service area.

(e) Contracted instructional personnel who are employed in positions funded by state or federal grants are employed only for the duration of the grant on a yearly basis. A temporary contract is for a stated period of time as distinguished from a continuing contract. A temporary contract may be terminated without cause with a two week notice by the employer or the employee.

(f) Assignment of contracted instructional staff will be made by the Superintendent based upon staff certification and school programming needs.

612:20-2-13. Dismissal/Nonreemployment Hearing

(a) When the Director receives a recommendation from the Superintendent that a teacher be dismissed or not reemployed pursuant to OAC 612:20-2-12, the Director shall send a Notice of Dismissal/Nonreemployment Hearing to the teacher. The notice shall be sent by certified mail, restricted delivery, return receipt requested, or by substitute process as provided for by law.

(1) The notice shall include a copy of the Superintendent's recommendation and the date, time and place of the hearing. The date of the hearing shall be no sooner than twenty (20) days or no later than sixty (60) days after the teacher's receipt of the notice.

(2) The notice shall specify the policy grounds as provided for at OAC 612:20-2-8(3) upon which the recommendation is based for career teachers and the cause upon which the recommendation is based for probationary teachers. The notice shall also specify the underlying facts supporting the recommendation.

(b) The Director shall assign the hearing to an independent Hearing Officer. The hearing shall be conducted as an individual proceeding pursuant to the Oklahoma Administrative Procedures Act (75 O.S. § 250 et seq.).

(c) The Director shall also designate a person as the Hearing Coordinator who shall facilitate communication between the parties and the Hearing Officer.

(d) The parties may conduct discovery as provided for in the Oklahoma Administrative Procedures Act. Such discovery may include written interrogatories, document requests, depositions and any other discovery device permitted by law.

(e) The Hearing Coordinator shall schedule a pre-hearing conference between the parties and the Hearing Officer at which time the parties shall submit witness lists and any requests for subpoenas. The Hearing Officer shall issue subpoenas pursuant to the Oklahoma Administrative Procedures Act. If a party fails to obey a subpoena, the Hearing Officer may apply to the district or superior court of the county of such person's residence or to any judge thereof for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony.

(f) At the hearing, the standard of proof shall be by the preponderance of the evidence and the burden of proof shall be on DRS to establish that the teacher's dismissal or nonreemployment is warranted.

(g) At the hearing, in the absence of any other arrangements made by the parties and the Hearing Officer, the order of the proceedings shall be as follows:

(1) Opening statement by DRS.

(2) Opening statement by the teacher.

(3) Presentation of the case by DRS, including the examination and cross-examination of witnesses.

(4) Presentation of the case by the teacher, including the examination and cross-examination of witnesses called by the teacher.

(5) Closing statement by DRS.

(6) Closing statement by the teacher.

(h) The hearing shall be tape-recorded and a copy of the tape shall be provided the teacher upon request.

(i) Within seven (7) calendar days following the conclusion of the hearing, the Hearing Officer shall prepare written findings of fact and conclusions of law separately stated and shall issue a decision as to whether the dismissal or nonreemployment be affirmed or denied. The findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (j) The Director shall review the Hearing Officer's decision as well as the record of the case and shall issue a final agency order regarding the dismissal or nonreemployment of the teacher.

(k) The teacher may seek a rehearing, reopening or reconsideration of the final order pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 317.

~~(l) In the event that a career teacher is dismissed or the career teacher's contract is not renewed, the Director shall notify the teacher of the right to trial de novo within ten (10) days of the receipt of the final order of the Director. The petition for a trial de novo must be filed within 10 days of receipt of the final order of the Director.~~

612:20-2-17. Full-time administrators; Appeal of dismissal or nonreemployment

(a) Whenever the Director, Chief of Staff or Superintendent shall determine that the dismissal or nonreemployment of an administrator from his/her administrative position should be effected, the administrator shall be notified in writing of the proposed action. The notice shall state the reason(s) for taking the action and shall inform the administrator of his/her right to

a hearing before the Director or the Director's designee prior to the dismissal or nonreemployment.

(b) The administrator may request a hearing within ten (10) calendar days after receipt of the notice of proposed dismissal or nonreemployment. If the administrator fails to request a hearing within the ten-day period, then the administrator will have waived the right to such a hearing. The request for a hearing shall be made in writing to the Director and sent by certified mail, return receipt requested, or by substitute process as provided for by law.

(c) Upon the receipt of a timely request, the Director shall schedule a hearing to take place no more than ten (10) calendar days after receipt of the request. The Director shall notify the administrator of the hearing by certified mail, return receipt requested, or by substitute process as provided for by law. The notice shall include a statement of the reasons for the recommendation for dismissal or nonreemployment, the facts underlying the recommendation, and a statement of the legal authority and jurisdiction under which the hearing is to be held.

(d) The Director or the Director's designee shall serve as the hearing officer. The hearing shall be an individual proceeding pursuant to the Oklahoma Administrative Procedures Act (70 O.S. § 250 et seq). Discovery may be conducted by the parties pursuant to the Oklahoma Administrative Procedures Act. The hearing officer shall be authorized to issue subpoenas pursuant to 75 O.S. § 315.

(e) The hearing shall be tape-recorded and a copy of the tape shall be provided the administrator upon request.

(f) If the hearing officer is the Director's designee:

(1) The hearing officer shall deliver to the Director a decision within three (3) workdays after the conclusion of the hearing. The decision shall include findings of fact and conclusions of law, separately stated. The hearing officer shall decide by a preponderance of the evidence whether reason(s) exist for the dismissal or nonreemployment of the administrator.

(2) In deciding whether to dismiss or to not reemploy the administrator, the Director shall take the hearing officer's decision into consideration and shall independently review the record of the case. The Director shall issue a final agency order regarding the dismissal or nonreemployment of the administrator within five (5) workdays after the date of the hearing officer's decision. The Director shall notify the administrator of the order by certified mail, return receipt requested, or by substitute process as provided for by law. The order shall include findings of fact and conclusions of law separately stated.

(g) If the Director serves as the hearing officer, the Director shall issue a final agency order regarding the dismissal or nonreemployment of the administrator within five (5) workdays following the conclusion of the hearing. The Director shall notify the administrator of the order by certified mail, return receipt requested, or by substitute process as provided for by law. The order shall include findings of fact and conclusions of law separately stated.

(h) The administrator may seek a rehearing, reopening or reconsideration of the final order pursuant to the Oklahoma Administrative Procedures Act at 75 O.S. § 317.

~~(i) In the event that an administrator is dismissed or the administrator's contract is not renewed, the Director shall notify the administrator of the right to trial de novo within ten (10) days of the receipt of the final order of the Director. The petition for a trial de novo must be filed within 10 days of receipt of the final order of the Director.~~

SUBCHAPTER 9. SERVICE PROGRAMS

612:20-9-1. Special services and devices for individuals who are deaf, hard of hearing, deaf-blind or have communicative disorders

This section applies to individuals with deafness, hard of hearing, deaf-blindness or communicative disorders who require access to telecommunication services and devices to enhance communication and contribute to the individual's residential and personal safety. The DRS division providing services under this section is authorized to share the case information of a service applicant or recipient with other DRS staff serving the same client.

(1) **Telecommunication and safety devices.** Consumers may be provided telecommunications equipment, personal or home safety devices, or other specialized equipment determined by individual need. The recipient of services may be asked to participate in the cost of the services provided based upon individual or family income in accordance with (d) of this Section. Equipment will not be replaced before five (5) years have lapsed unless determined by DRS staff to be malfunctioning and not caused by consumer misuse or neglect. Appeals of this waiting period must be presented in writing for administrative review. DRS staff will consider possible changes in disability. The consumer is responsible for the equipment when the manufacturer's warranty expires prior to the five (5) year period. DRS will provide surge protection which must be used. Failure to use surge protection will be considered consumer neglect. Additional requirements are stated in (A) through (E) of this Subsection.

(A) All recipients of equipment must be residents of the state.

(B) Medical or audiological verification will be required to support the applicant's diagnosis of a hearing loss to the extent the applicant cannot use the telephone, or communicative disorders to the extent speech is unintelligible. If verification is not available, DRS will authorize the initial audiological evaluation. Individuals with deaf-blindness may be referred to the deaf blind program to determine additional equipment needs. Documentation of legal blindness or inability to read standard print is required.

(C) Parents or other legal guardians must assume responsibility for the telecommunication devices assigned to clients under 18 years of age.

(D) The guidelines in (i) - (iv) of this Paragraph will be used in determining the priority of service.

(i) Qualified persons with disabilities living alone.

(ii) Qualified households where all residents have substantial disabilities.

(iii) Qualified households where two or more residents have substantial disabilities.

(iv) Qualified households where one of the residents has a substantial disability.

(E) To apply for assistance, an individual must complete an application and registration using the Application for the Equipment Distribution Program form. Applications may be obtained by contacting any DRS office. Equipment may be mailed to the closest DRS office for the consumer to pick up. If not picked up within 30 days, the equipment will be returned to DRS inventory to be issued to the next consumer on the waiting list.

(2) **Hearing aids for senior citizens.** Hearing aids may be purchased for individuals who are sixty (60) years of age or older and have a hearing loss of 35 decibels or greater in the better ear. The level of hearing loss is to be determined by a vendor audiologist selected by the applicant and having a current contract to provide services under this program. One hearing aid will be purchased per person with the exception of (E) below. All services and equipment purchased will be paid at the contracted rate. The individual may be required to participate in the cost of services in the form of a co-payment as determined under (3) of this Section. Procedures for providing hearing aids under this program are presented in (A) through (D) of this Section.

(A) **Application.** An applicant will complete the Application for the Equipment Distribution Program and submit the completed application along with proof of income to the Oklahoma School for the Deaf, DRS.

(B) **Eligibility determination and authorization of services.** Upon receipt of a completed application, DRS will determine the amount of any required co-payment in accordance with (3) of this Section. Staff will authorize an audiological evaluation to the preferred vendor designated on the application form. The referral source and applicant will be notified of the authorization and the amount of any required co-payment to be made to the DRS/235 Fund. The report of audiological evaluation is sent to the Oklahoma School for the Deaf. If the result is a hearing loss of 35 decibels in the better ear, staff will issue an authorization for a hearing aid and appropriate ancillary services and devices in accordance with the vendor contract. The level of hearing loss will be determined averaging the readings reported at the 1000 Hz, 2000 Hz, 3000 HZ and 4000 HZ frequency ranges.

(C) **Appointments and transportation.** DRS staff will notify the individual of any authorizations for evaluation or services. This notification will instruct the individual to contact his/her selected vendor for an appointment.

(D) **Disposal of unused hearing aids.** Service recipients will be encouraged to return hearing aids to DRS if no longer needed.

(E) **Applicants who have hearing loss and are legally blind.** If a hearing aid applicant meets the adiological criteria for (B) above, and is also legally blind, they can be approved to receive two hearing aids.

(3) **Client participation in cost of services.** Allowable income levels for these services will be 200% of the current income guidelines for food stamps. The monthly earnings, evaluated annually, that fall above the income guidelines create a surplus. Ten percent (10%) of that surplus will be the consumer's participation in the cost of services payable to DRS/Fund 235. If the surplus exceeds the service cost DRS will not participate.

(4) **Disposal of unused telecommunications equipment and assistive communication devices.** As with hearing aids, service recipients will be encouraged to return useable equipment to DRS if no longer needed.

[OAR Docket #12-625; filed 5-11-12]

TITLE 612. STATE DEPARTMENT OF REHABILITATION SERVICES
CHAPTER 25. BUSINESS ENTERPRISE PROGRAM

[OAR Docket #12-626]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 2. General Provisions
612:25-2-5. Definitions [AMENDED]
612:25-2-6. Promulgation of Business Enterprise Program policies [REVOKED]
612:25-2-9. Conflict of interest [NEW]
Subchapter 4. The State Licensing Agency
Part 1. Organization and General Operation Standards
612:25-4-1. Organization of the State Licensing Agency [AMENDED]
612:25-4-3. Guidelines for communication [REVOKED]
612:25-4-4. Management services provided by the State Licensing Agency [AMENDED]
Part 3. Business Enterprise Program Training
612:25-4-14. Training for new or potential licensed managers [AMENDED]
612:25-4-15. Training for present licensed managers [AMENDED]
612:25-4-16. Training for Business Enterprise Program staff [NEW]
Part 5. State Licensing Agency Responsibility for Business Enterprise Operations
612:25-4-25. Management of BEP equipment and fixtures [AMENDED]
612:25-4-26. Maintenance and replacement of business enterprise equipment [AMENDED]
612:25-4-27. Initial inventory and supplies [AMENDED]
612:25-4-28. Method of payment for initial stock [REVOKED]
612:25-4-29. Failure of licensed manager to repay loan [REVOKED]
612:25-4-30. Second merchandise loan [REVOKED]
Part 9. Assignment and Transfer of Licensed Managers
612:25-4-53. Assignment, promotion and transfer policy [AMENDED]
612:25-4-54. Business enterprise vacancy announcement [AMENDED]
612:25-4-55. Qualifications [AMENDED]
612:25-4-56. Applications [AMENDED]

612:25-4-57. Applicant Selection Committee [AMENDED]
612:25-4-58. Annual Evaluation [AMENDED]
612:25-4-59. Interview, Selection Process and Scoring [AMENDED]
612:25-4-60. Ninety day replacement [AMENDED]
612:25-4-61. Satellite/remote business enterprise locations [AMENDED]
612:25-4-62. Vending machine income [AMENDED]
Part 11. Business Enterprise Program Auditing and Due Process
612:25-4-73. Due process [AMENDED]
612:25-4-74. Probation [REVOKED]
Subchapter 6. Licensed Managers and Business Enterprise Operation
Part 1. Licensed Managers
612:25-6-1. Licensing requirements for managing a business enterprise [AMENDED]
612:25-6-2. Standards for licensed managers [AMENDED]
612:25-6-2.1. Probation [NEW]
612:25-6-3. Grounds for suspension or termination of a license [AMENDED]
612:25-6-5. Motor vehicle operation [AMENDED]
Part 3. Business Enterprises
612:25-6-15. Setting aside of funds [AMENDED]
612:25-6-16. Criteria to establish a business enterprise [AMENDED]
612:25-6-18. Establishing new licensed managers in business enterprises [AMENDED]
612:25-6-19. Employees of the licensed manager [AMENDED]
612:25-6-20. Closing a business enterprise [AMENDED]
612:25-6-21. Business expenses [AMENDED]
612:25-6-22. Monthly reports [AMENDED]
Part 5. The Elected Committee of Licensed Managers
612:25-6-32. The Elected Committee of Licensed Managers [AMENDED]
612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers [AMENDED]

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The Oklahoma Commission for Rehabilitation Services; United States Code Title 20, Sections 107 et seq.; Title 29, Sections 701through 791, Oklahoma Statute Title 7, Section 71 et seq.

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Changes to Chapter 25 include updating language, removing duplications; following auditors recommendations and following legal requirements.

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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, 2012:

SUBCHAPTER 2. GENERAL PROVISIONS

612:25-2-5. Definitions

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

~~**"Acquired stock"** means that stock in which the licensed manager has accrued equity and which the State Licensing Agency, in conjunction with the licensed manager or licensed managers involved, has determined is suitable for use. Stock in which the licensed manager has not accrued equity is not acquired stock and remains the property of the State Licensing Agency.~~

"Act" means the Randolph-Sheppard Vending Facility Act (Public Law 74-732), as Amended by Public Law 83-565 and Pub Law 93-516, 20 U.S.C., Ch. 6A, Sec. 107.

"Active participation" means a process of good faith negotiations involving the Elected Committee of Licensed Managers and the State Licensing Agency. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which ~~affect~~govern the duties, supervision, transfer, promotion and financial participation of licensed managers. The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

"BEP" means the Business Enterprise Program of the State Licensing Agency which provides self-employment opportunities for qualified persons who are blind.

"BEP ~~Programs Manager~~Operations Coordinator" means the person who has responsibility for the operation of the Business Enterprise Program in the State.

~~**"BEP Training Specialist"** means an individual who is responsible for the SLA's part in planning, coordinating, and/or conducting the training activities for prospective licensed managers and for in-service and upward mobility training activities for experienced licensed managers.~~

"Blind person" means a person who, after examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the person shall select, has been determined to have (1) not more than 20/200 central visual acuity in the better eye with correcting lenses, or (2) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

"Board" or "Commission" means the governing body for the State Licensing Agency.

"Business consultant (BC)" means an individual who provides consultative and management services to those business enterprises and licensed managers in the area of the State to which the consultant is assigned.

"Business enterprise" means an approved business administered by the State Licensing Agency. See definition of "Vending Facility."

"Business Enterprise Program (BEP)" means the Business Enterprise Program services available to establish business enterprises for persons who are blind.

"Cafeteria facility" means a food dispensing business enterprise capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where customers serve themselves from displayed selections. A cafeteria may be fully automatic or provide limited waiter or waitress service. Table and/or booth seating facilities are always provided.

"Client or Consumer" means any person who has made application for the State Licensing Agency's services and has been determined by the State Licensing Agency to be eligible for services.

"Commissioner" means the Commissioner of the Rehabilitation Services Administration (RSA) who exercises approval authority for the Federal government under the Randolph-Sheppard Act.

"Committee" means the Elected Committee of Licensed Managers.

"Contract" means a written agreement between the State Licensing Agency and officials in control of Federal or other property to establish a business enterprise.

"Contract labor" means a person or company that performs duties or services not a part of the regular duties of the business enterprise.

"Counselor" means Division of Vocational Rehabilitation or Division of Visual Services counselors assigned to the State Licensing Agency's program of vocational rehabilitation.

"Director" or **"Executive Director"** means the chief administrator of the State Licensing Agency.

"Displaced licensed manager" means a licensed manager who has been displaced from his or her business enterprise through no fault of his or her own.

"Dry/Wet facility" means any business enterprises providing manual dispensing of prepackaged articles, refreshments, and services.

"Elected Committee of Licensed Managers (ECM)" means the committee elected biennially by licensed managers in accordance with 34 CFR 395.14.

"Emergency" means an unforeseen circumstance that calls for immediate action. When a piece of equipment is out of order it is not normally considered an emergency unless it will harm/destroy lives, other equipment or property.

"Employee" means an individual who receives compensation for services rendered to a licensed manager.

"Equipment, expendable" means items having a relatively small cost per item and having a relatively short life expectancy.

"Equipment, non-expendable" means all necessary equipment which requires a relatively high capital outlay and has a normal life expectancy of several years.

"Federal property" means any building, land or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States.

"Federal regulations" means the regulations issued pursuant to the Randolph-Sheppard Act.

"Grantor" means a Federal, State, County, Parish, city government, private corporation, company, partnership or individual, who grants a permit or enters into an agreement with the State Licensing Agency to operate a business enterprise on its/their property.

"Grantor's agreement" means a written document between a Grantor and the State Licensing Agency which sets forth the terms, conditions and responsibilities of all parties to the agreement for the operation of a business enterprise on private and/or public property.

"Gross receipts" means all revenue from a business enterprise, including sales tax.

"Inactive Licensee" means a licensed individual who is not currently working in the Business Enterprise Program.

"Initial stock and supplies" means those resalable items or supplies necessary for the opening and operation of a specific type of business enterprise.

"Interim manager" means a licensed manager appointed to manage a business enterprise on a temporary basis.

"License" means a written instrument issued by the State Licensing Agency to a person who is blind, authorizing such person to manage a business enterprise.

"Licensed employee" means a licensed individual who is currently working for a licensed manager.

"Licensed manager (LM)" means a licensed individual who has signed an agreement with the State Licensing Agency to manage a Randolph-Sheppard business enterprise under the supervision of the State Licensing Agency.

"Licensee" means a person who is blind and holds a valid BEP license.

"Licensing agency" means the State Licensing Agency (SLA), which has been designated by the Commissioner, pursuant to the Act, to issue licenses to persons who are blind for the management of business enterprises.

"Management services" means inspection, quality control, consultation, accounting, regulating, in-service training, and other related services provided on a systematic basis to support and improve business enterprises operated by licensed managers.

"Manager's agreement" means an agreement between a licensed manager and the State Licensing Agency, establishing basic terms and conditions for management of a business enterprise.

"Net earnings" or "Net profits" means gross profit after deducting operating expenses and set-aside collected.

"Net proceeds" means the amount remaining from the sale of articles or services of business enterprises and any vending machine income or other income accruing to licensed managers after deducting the cost of such sales and other authorized expenses excluding set-aside charges required to be paid by the licensed managers.

"Net sales" means the sum total of sales, excluding sales tax.

"Nominee" means a nonprofit agency or organization designated by the State Licensing Agency through a written agreement to act as its agent in the provision of services to

licensed managers under the State's Business Enterprise Program.

"Other income" means money received by a licensed manager from sources other than over the counter and machine sales.

"Other property" means property which is not Federal property and on which business enterprises are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

"Permit" means the official approval given a State Licensing Agency by a department, agency, or instrumentality in control of the maintenance, operation and protection of Federal property or person in control of other property where the State Licensing Agency is authorized to establish a business enterprise.

"Purveyor" means an approved source of supply for food, beverages, supplies, or services.

"Randolph-Sheppard Act" means Public Law 74-732 as amended by Public Law 83-565, Public Law 93-516, and Public Law 95-602, 20 U.S.C. Chapter 6A, Section 107.

"Retained vending machine income" means vending machine income disbursed by a property managing department, agency or instrumentality of the United States, or received from vending machines on State or other property in excess of the amounts eligible to accrue to licensed managers.

"Routine preventive maintenance" means the regular care, upkeep, and cleaning of equipment used in a business enterprise whether owned by the State Licensing Agency or the licensed manager.

"Rules and regulations" means the instrument written by the State Licensing Agency and approved by the Secretary of Education setting forth the conduct and operation of the Business Enterprise Program. A copy of the document granting approval of the rules and regulations from RSA, will be mailed to each licensed manager as a revision to the BEP handbook.

"Saleable stock/merchandise" means products comprising the merchandise available for sale to the public and determined by the SLA to be from an approved source in the original container, in date, consistent with the needs of the customers for a particular business enterprise.

"Satellite business enterprise" means a business enterprise without a permanently assigned licensed manager which is being managed by a licensed manager who is also managing his/her regularly assigned business enterprise.

"Satisfactory site" means an area determined by the BEP ~~Programs Manager~~Operations Coordinator to have sufficient space, electrical and plumbing outlets, and other such accommodations as prescribed by the Act, for the location and operation of a business enterprise in accordance with applicable health laws and building codes.

"Secretary" means the United States Secretary of Education.

"Set-aside funds" means funds which accrue to a State Licensing Agency from an assessment against the net proceeds of each business enterprise in the State's business enterprise Program and any income from vending machines on Federal property which accrues to the SLA.

"Snack bar business enterprise" means a business enterprise engaged in selling limited lines of refreshment and prepared food items necessary for a light meal service.

"State Licensing Agency (SLA)" means the State agency that issues licenses to persons who are blind for the operation of business enterprises on public and/or private property.

"State property" means lands, buildings, and/or equipment owned, leased, or otherwise controlled by the State.

"Statewide average manager earnings" means the average annual manager earnings (after set-aside) as calculated each year for the RSA-15 Report.

"Trainee" means a qualified client of the Division of Visual Services, who when referred to the Business Enterprise Program, is placed in training to prepare for licensing under the rules and regulations of the State Licensing Agency.

"Training program" means the program of study and/or on-the-job training provided to prospective and/or experienced licensed managers.

"Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by licensed managers and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws and including the vending or exchange of chances for any lottery authorized by State Law and conducted by an agency of a State within such State. [CFR 34, Part 395.1(X)]

"Vending machine" means any machine, operated using currency or other medium of exchange, which dispenses articles or services, except any machine operated by the United States Postal Service for the sale of postage stamps or other postal products and services. Machines providing services of a recreational nature and telephones shall not be considered to be vending machines.

"Vending machine facility" means an automated business enterprise which dispenses a variety of food and refreshment items and services from vending machines. Included in this category would be interstate highway locations and vending machine routes.

"Vocational Rehabilitation Services" means those services as defined in the Rehabilitation Act. [29 USC 701 et seq.]

"Volunteer" means an individual who works in a business enterprise and receives no compensation.

612:25-2-6. Promulgation of Business Enterprise Program policies [REVOKED]

~~(a) Rules and procedures, that is, the policies governing the administration of the Business Enterprise Program are developed and maintained in accordance with the Randolph-Sheppard Act [20 U.S.C., Sections 107 et. seq.], the Rehabilitation Act [29 U.S.C. 31-42], and the Administrative Procedures Act [75 O.S., Sections 250 et seq].~~

~~(b) The rule making authority is the Oklahoma Commission for Rehabilitation Services, hereinafter referred to as the SLA.~~

612:25-2-9. Conflict of interest

(a) **State Licensing Agency (SLA) employees.** DRS policy prohibits the employment of any person in a position that would result in immediate supervision by a relative or two or more relatives reporting to the same supervisor. Employment in the Business Enterprise Program (BEP) and SLA is subject to DRS rules governing related employees.

(b) **BEP employee relationship to program participants.** It is the policy of the SLA that BEP employees and SLA administrators with responsibility for BEP operation may not be placed in a position to establish program eligibility, authorize program services or otherwise participate in program decisions for BEP applicants or participants who are related to such employees by blood or marriage. An employee shall immediately disclose to his/her supervisor the existence of a relation to a BEP applicant or participant. The BEP operations coordinator, SLA administrator or director (if appropriate) may reassign employee duties or take such other measures as are permitted under law and DRS rules to comply with this policy.

(c) **Conflict of interest.** BEP employees are subject to DRS policy and Oklahoma Ethics Commission rules regarding use of position for personal gain and avoidance of conflicts of interest.

SUBCHAPTER 4. THE STATE LICENSING AGENCY

PART 1. ORGANIZATION AND GENERAL OPERATION STANDARDS

612:25-4-1. Organization of the State Licensing Agency

(a) **Governing board.** The Oklahoma Department of Rehabilitation Services (DRS) is the designated State Licensing Agency (SLA) for administration of Oklahoma's vending facility program for the blind under the Randolph-Sheppard Act. The governing board of the SLA is the Oklahoma Commission for Rehabilitation Services. ~~There are three members of the Commission. One member is appointed by the Governor, one member is appointed by the President Pro Tempore of the Oklahoma Senate, and one member is appointed by the Speaker of the Oklahoma House of Representatives.~~ The Director of ~~the Department of Rehabilitation Services (SLA)~~DRS reports directly to the Commission.

(b) **~~Central office staff~~Business Enterprise Program administration.** The Business Enterprise Program (BEP) is located in the Division of Visual Services, a division of DRS, and is administered by the Business Enterprise Program ~~Programs Manager~~Operations Coordinator who reports ~~directly~~ to the Visual Services Division Administrator. ~~The BEP Programs Manager is assisted by the business consultants, training officer, support services personnel and an administrative assistant.~~

(c) **~~Field~~BEP staff.** ~~The State is divided into specific geographic areas for the purpose of administering the Business Enterprise Program, and a business consultant is assigned to each area. The business consultant provides the link between the licensed managers and the central office and is authorized to provide the services and is obligated to assist and support the licensed managers in complying with the rules and regulations of the Rehabilitation Services Administration and the SLA relative to business enterprises established under the Randolph-Sheppard Act.~~ The SLA, with consultation from the Elected Committee of Licensed Managers, determines staffing requirements for administration of the BEP and provision of services to achieve the mission, goals and objectives of the Program.

~~(d) **Support services staff.** The SLA purchases and provides equipment for use in business enterprises as required by Federal Law. The equipment is purchased, stored and serviced by the Support Services Section of the BEP. Personnel include a Support Services Supervisor, Clerk Typist, Mechanical Contractor, Vending Machine Technician, Warehouse Worker and a Custodial Worker. The support services personnel are responsible for all support services including the purchase, delivery, storage, maintenance and inventory control of equipment. The Support Services Section is also responsible for writing and administering support contracts associated with the BEP.~~

(~~e~~d) **Licensed managers.** The individual enterprises established by the Business Enterprise Program are managed by licensed managers ~~who derive their livelihood from net profits of the operations~~. Licensed managers are subject to ~~instructions, policies, rules and regulations~~ the policies and procedures of the Business Enterprise Program, but are not employees of the program, the SLA, or the State of Oklahoma. They do, however, have a contractual relationship with the SLA and are required to manage the business enterprise in accordance with established rules and regulations.

612:25-4-3. Guidelines for communication [REVOKED]

~~**Communications originated by a licensed manager.** The licensed manager is to maintain appropriate and professional communication with customers and grantor. The point of communication for licensed managers with the SLA is the business consultant. Circumstances in which a licensed manager may contact the BEP Programs Manager are:~~

~~(1) when a problem cannot be resolved through the area business consultant or the Elected Committee of Managers,~~

~~(2) when there is a specific complaint concerning the conduct and/or behavior of a business consultant, or~~

~~(3) when an emergency develops and the business consultant is not available.~~

612:25-4-4. Management services provided by the State Licensing Agency

(a) **Overview of management services.** Management services provided by the State Licensing Agency (SLA) include but are not limited to~~inspection~~ inspections, quality control, consultation and technical assistance for licensed managers, accounting, regulating, training, including in-service training,

equipment procurement and other ~~related~~ services provided ~~on a systematic basis~~ to support and improve business enterprises.

(b) **Consultation and technical~~Technical~~ assistance ~~services~~.** The SLA ~~will provide each~~ provides licensed ~~manager~~managers with consultation and technical assistance services that may include:

(1) Recommendations for optimizing the profitability of the business enterprise~~.~~;

(2) Recommendations and feedback on business enterprise operations including quality, service, and cleanliness~~.~~;

(3) Possible solutions to problems recognized by the licensed manager or brought to the licensed manager's attention by BEP staff or the grantor~~.~~;

~~(4) Providing upward mobility and in-service training.~~

(~~5~~4) Explanation of the SLA's procedures, policies, and standards~~.~~;

~~(c) **Services provided by the business consultant.** Business consultants will assist licensed managers, in their assigned area, to meet Business Enterprise Program requirements through review and consultation on:~~

(~~1~~5) Information on compliance with applicable laws and ~~program~~ regulations;

(~~2~~6) Instruction on compliance with all conditions in the manager's license;

(~~3~~7) Information and inspection to help the licensed manager ~~assuring~~assure that merchandise is~~:~~sold in accordance with the grantor's agreement;

~~(A) sold in accordance with the grantor's agreement;~~

~~(B) of high quality, adequately stocked, and properly displayed;~~

~~(4) standards for employee personal appearance and hygiene;~~

~~(5) quality customer service;~~

(~~6~~8) Instructions for maintenance of sanitation and safety standards;

(~~7~~9) Instructions for proper maintenance of equipment;

(~~8~~10) Recommendations for building effective communications and working relationships between the licensed manager and customers, ~~purveyor~~purveyors, employees, grantor, the SLA and the general public; and

(~~9~~11) Instruction on SLA and other agency requirements for record keeping and reporting.~~; and~~

~~(10) licensed manager performance evaluations.~~

(~~d~~c) ~~**Business consultants' on-site review**~~**On-site location reviews.** ~~Business consultants' on-site~~On-site location reviews will be made as often as necessary, but not less than once each month to ensure the continued success of the business enterprise. Each ~~time the business consultant visits~~on-site location review of a business enterprise~~, he/she~~ will be ~~document~~documentedthe visit onusing such forms or methods as are prescribed by the BEP ~~the case memorandum form~~.

~~(e) **Inspection reports.** The business consultant completes an inspection of the facility using the Location Review form at least monthly.~~ The report will contain at ~~least~~a minimum the following information ~~in (1)-(6) of this Subsection~~ to the extent relevant:

(1) ~~Suggestions which will aid the licensed manager in the successful operation of the business enterprise.~~Status of compliance with the licensed manager's agreement.

(2) Violations (if any) of State or Federal Laws and the SLA's policies~~, rules~~ and ~~regulations~~procedures.

~~(3) Comments on any conditions relating to any aspect of the business enterprise and recommendations for improvement.~~

~~(4) Follow-up action from previous inspection reports about noted discrepancies.~~

~~(5) Training needed or requested.~~

(~~6~~3) Observation that~~Proper~~proper insurance, permits and license are current and posted.

~~(f) **Visits by the BEP Programs Manager.** The BEP Programs Manager will periodically visit business enterprises.~~

~~(g) **Assistance of Rehabilitation Services staff.** At the request of the business consultant or other BEP staff members, rehabilitation staff will provide necessary assistance to the program when in the best interest of the licensed manager or the SLA.~~

(~~h~~d) **SLA provision of training.** The SLA shall ensure that effective programs of ~~vocational and other~~ training ~~services, including personal and vocational adjustment, books, tools, and other training materials,~~ shall be provided to licensed manager trainees, current licensed managers and BEP staff, as appropriate ~~as vocational rehabilitation services~~. Such programs for trainee and current licensed managers shall include, as appropriate, on-the-job training in all aspects of business enterprise operations for licensed managers, and upward mobility training including further education and additional training or retraining for improved work opportunities for all licensed managers. ~~[34 CFR 395.11] Details of the BEP training provided by the SLA are presented in 612:25-4-14 and 612:25-4-15.~~

PART 3. BUSINESS ENTERPRISE PROGRAM TRAINING

612:25-4-14. Training for new or potential licensed managers

(a) ~~**General statement**~~**Overview of Licensed Manager Training.** The Business Enterprise ~~Training~~ Program (BEP)~~trains clients in the day-to-day operations of the business enterprise~~ provides individuals who are blind with training that leads to potential employment as a Licensed Manager of a vending facility or related business in the Business Enterprise Program. The ~~scope of the program~~ training program includes but is not limited to training in ~~the Randolph-Sheppard Act~~ laws and regulations affecting~~, rules and regulations of~~ the Business Enterprise Program and the operation of food service facilities, state and federal tax reporting, food service ~~preparation and delivery~~operations, sanitation, ~~personal appearance and hygiene,~~ inventory ~~and stocking~~ control, money management, staffing of personnel, ~~and~~ safety procedures, business management principles and techniques, and preparation of reports required by the State Licensing Agency. The licensed manager training program

will be based on a curriculum developed and periodically reviewed through consultation with appropriate business representatives, trainers and training facilities, BEP experts, and the Elected Committee of Licensed Managers. Additional training required by the licensed manager trainee to adjust to blindness, learn assistive technology skills or improve the trainee's opportunity to succeed as a licensed manager may be arranged through coordination with~~Through~~ the DRS Division of Visual Services and DRS Division of Vocational Rehabilitation~~, the SLA will provide training necessary for each blind individual, including, personal and vocational adjustment, vocational counseling and guidance, training materials, and licensed manager training~~.

~~(1) The SLA will provide training that leads to licensing and potential for employment in the Business Enterprise Program. The Business Enterprise Training Program provides training in essential aspects of business enterprise operation and management for blind persons with the capability to operate a business enterprise.~~

~~(2) Through the Division of Visual Services and Division of Vocational Rehabilitation and the Business Enterprise Training Program, the SLA provides additional training or retraining for improved work opportunities for the licensed managers.~~

~~(3) Post-employment services are provided to the licensed managers through vocational rehabilitation services as necessary to assure that the optimum employment outcome is achieved and suitable employment is maintained.~~

~~(b) **Prerequisites for training.** Before an individual can qualify as a Business Enterprise Program trainee, the DVS or DVR Counselor assures the prerequisites set forth in (1) through (7) of this Subsection are met.~~

~~(1) a current general physical examination;~~

~~(2) current eye examination;~~

~~(3) current psychological evaluation, if indicated;~~

~~(4) completion of personal adjustment training, when indicated;~~

~~(5) good general health and stamina;~~

~~(6) completion of all needed physical restoration services when indicated; and~~

~~(7) an evaluation from the Visual Services Evaluator including completion of the "Job Fit Survey".~~

(~~c~~b) **Application process.** ~~Each applicant who meets the prerequisites for training is interviewed by the local business consultant. Before the interview, the business consultant reviews the applicant's rehabilitation case folder. The business consultant assesses the applicant's qualifications and reports his or her recommendations to the local counselor. The local counselor sends the application to the Business Enterprise Program training officer with a cover memorandum which includes:~~ Applications for BEP training shall include the following information which may be obtained from the individual's counselor:

(1) current eye examination, documenting blindness;

(2) documentation for United States citizenship and residency in the State of Oklahoma;

(3) documentation the client is 18 years of age;

~~(4) client's work history;~~

~~(5) educational background;~~

~~(6) personal adjustment training when indicated;~~

~~(7)~~ (4)rehabilitation training prerequisites established by the BEP ~~Program Staff~~ in consultation with the ECM to better optimize the successful employment outcome;

~~(8) desired training date consistent with the BEP Program Training schedule;~~

~~(9) current physical examination;~~

~~(10) current psychological evaluation, when indicated; and~~

~~(11) business consultants evaluation.~~

~~(12) this application must be received and approved by BEP Programs Manager a minimum of 60 days prior to the next scheduled training session.~~

(c) **Acceptance for training.** Applicant qualifications will be reviewed by BEP staff who will report any training-related recommendations to the individual's DVS/DVR counselor and BEP operations coordinator. An individual's application must be approved by the BEP operations coordinator prior to acceptance into the training program.

(d) **Notice regarding criminal background record.** Before entering training, BEP applicants will be informed that a criminal history may prevent an individual from being licensed to manage some BEP facilities.

(~~d~~e) **Duration of training.** ~~The normal duration of training is six months. Training may be extended or reduced at the discretion of the training officer based on the training needs of the individual trainee~~To be eligible for licensure as a BEP facility manager an individual must complete the full BEP manager training program, unless the BEP operations coordinator determines an exception is justifiable.

~~(e) **Evaluation.** Each trainee's progress is evaluated monthly with regard to his/her potential for future success. The Monthly Trainee Progress Form is completed by the training officer and discussed with and acknowledged by the trainee and a copy forwarded to trainee's counselor.~~

(f) **Completion of training.** Each trainee who completes the BEP ~~Managers Training Course~~ manager training program is issued a certificate certifying that the trainee has met all the criteria to be a licensed manager in the Business Enterprise Program. The individual is granted a license upon actual entry into the program.

(g) **Failure to complete training.** If it appears that a trainee will not be able to successfully complete training, the appropriate training official and BEP operations coordinator will review the individual's training record before making a decision to terminate training. The BEP operations coordinator will notify the trainee's DVS or DVR counselor of any BEP decision to terminate training.~~The training officer will notify the BEP Programs Manager whenever it appears that a trainee will not be able to successfully complete training. The BEP Programs Manager will review the written recommendation of the training officer along with all pertinent information concerning the trainee and make a decision regarding continuation or termination of the training. The BEP Programs Manager will notify the trainee's DVR or DVS counselor of a decision to terminate training.~~

(h) **Post-training interview.** Upon completion of training, each trainee is interviewed by a representative of the Elected Committee of Licensed Managers, normally the chairperson, to evaluate the effectiveness of the training program. The interviewer formulates recommendations and comments regarding the training program to provide to the BEP ~~Programs Manager~~ Operations Coordinator. ~~This interview does not determine the trainee's eligibility. The purpose of this interview is to evaluate the performance of the training officer and the effectiveness of the training program. The SLA will make the final determination as to who will be licensed.~~

(i) **Acceptance of out-of-state licenses.** The ~~training~~BEP administrative staff person ~~officer~~in charge of training will evaluate the skills and knowledge of BEP applicants ~~for the Business Enterprise Program~~ who were licensed managers in other states. Training will be provided to correct any noted deficiencies and acquaint the applicant with Oklahoma's program. Special training will be given the applicant in preparation for the Oklahoma Health Department's Certified Food Handler's test. After qualifications are met, the applicant is issued a certificate.

(j) **Longevity.** Longevity in the Oklahoma Business Enterprise Program will start the first work day upon entering into the program after training. Only time actually worked in the Oklahoma BEP may be counted.

612:25-4-15. Training for present licensed managers

Post-employment ~~(upward mobility)~~ training for licensed managers will be provided by the ~~SLA~~State Licensing Agency to encourage greater professional competence and to promote ~~the upward mobility of~~achievement of maximum vocational potential ~~licensed managers~~.

612:25-4-16. Training for Business Enterprise Program staff

The State Licensing Agency is responsible for the development and provision of training for Business Enterprise Program (BEP) staff who provide consultation and technical assistance to licensed managers. BEP consultant training will be based on a curriculum that is developed and periodically reviewed through consultation with appropriate business representatives, instructors and training facilities, BEP staff, vending facility managers and the Elected Committee of Licensed Managers.

PART 5. STATE LICENSING AGENCY RESPONSIBILITY FOR BUSINESS ENTERPRISE OPERATIONS

612:25-4-25. Management of BEP equipment and fixtures

(a) The SLA will provide each business enterprise with fixtures and equipment in such quantity and quality so as to give reasonable assurance of successful operation by the licensed manager. The SLA retains the right, title, and interest to all BEP equipment and fixtures. The SLA has the authority to direct, control, transfer and dispose of such equipment as it deems necessary. All capital equipment is purchased, inventoried, and disposed of in accordance with Department of Rehabilitation Services policy.

(b) Equipment for new locations will be determined by the ~~business consultant and~~ BEP ~~Programs Manager~~Operations Coordinator and staff in consultation with an ~~ECM~~ Elected Committee of Licensed Managers (ECM) member specified by the ECM Chairperson.

(c) The licensed manager ~~will~~may make ~~no~~ additions, deletions or modifications to the business enterprise and its operation, in the form of equipment, fixtures or facilities, ~~without first~~by obtaining written authorization from the ~~SLA~~ BEP.

612:25-4-26. Maintenance and replacement of business enterprise equipment

The SLA shall maintain, or cause to be maintained, all business enterprise equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the business enterprise. ~~[34 CFR 395.10]~~

612:25-4-27. Initial inventory and supplies

~~(a) The SLA shall provide for initial inventory of merchandise for resale as needed by a licensed manager.~~

(~~b~~a) ~~All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA.~~ **Initial inventory.** A licensed manager may acquire initial merchandise for resale by purchasing it with his/her own funds, utilizing self-employment assistance that may be available from DRS or other public and private sources, or use of a merchandise loan provided by the State Licensing Agency (SLA).

(~~c~~b) ~~The licensed manager will at all times keep an adequate stock of merchandise consistent with the needs of the business enterprise. At no time will inventory level fall below that of the balance of the merchandise loan.~~ **Merchandise loan.** When necessary to enable a licensed manager to acquire initial merchandise inventory, the SLA may extend a merchandise loan subject to the following terms:

(1) The amount of the loan will be determined by the SLA in consultation with the licensed manager and based on an assessment of merchandise necessary to initiate sales.

(2) The total amount of the loan will not exceed the average of the prior year's inventories without approval from the BEP operations coordinator.

(3) All merchandise purchased and placed on a merchandise loan must have prior approval by the SLA. The SLA will not make multiple purchases from any purveyor.

(4) The incoming licensed manager, BEP business consultant and BEP operations coordinator will determine what may be purchased from the existing stock of the outgoing facility manager. Only salable merchandise may be purchased.

(5) A merchandise loan must be repaid to the SLA by a licensed manager in monthly installments equaling two

percent (2%) of monthly gross sales. A licensed manager shall not allow the facility inventory level to fall below that of the balance of the merchandise loan. Managers receiving loans will sign a merchandise security agreement that will be retained on file by DRS and released to the manager when loan repayment is complete.

(6) When a merchandise loan is secured by stock, a licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.

(7) When a licensed manager leaves a business enterprise, any remaining merchandise loan balance (and other unmet obligations to the SLA) will be subtracted from ending inventory in determining the manager's equity in ending stock.

~~(d) The total amount of the merchandise loan will not exceed the average of the prior year's inventories without approval from the BEP Programs Manager.~~

~~(e) The incoming licensed manager, the business consultant, and BEP Programs Manager will have final say as to what is purchased from the existing stock. If the leased/owned equipment transfers to the new licensed manager, the products for that piece of equipment will be placed on merchandise loan.~~

~~(f) The SLA will not make multiple purchases from any purveyor. The SLA will make a one time purchase from each purveyor to acquire the proper and sufficient merchandise to manage the business enterprise.~~

(~~g~~c) ~~The licensed manager will sign a merchandise security agreement which will be filed at the county courthouse.~~**Failure of licensed manager to repay loan.**

(1) If a licensed manager's merchandise loan payment is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation and is not eligible to make application into the selection process.

(2) If a licensed manager's merchandise loan payment remains delinquent through the succeeding month and is not received in the BEP office within five days after the succeeding month's due date, the BEP operations coordinator will recommend suspension or termination of the operator's agreement by the SLA director unless an alternate repayment schedule has been approved by the SLA. The SLA will initiate action to collect a remaining merchandise loan balance when a loan payment is two months overdue.

(3) When a licensed manager leaves the program for any reason, the merchandise loan is due in full unless arrangements are made with the SLA to divide the balance into twelve (12) equal payments that will be due on the first day of each month.

(d) **Second merchandise loan.**

(1) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan may receive a second merchandise loan for the same facility when it has been determined that the loan is necessary to allow the licensed manager to remain in his/her facility.

(2) If a licensed manager requires a second merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will be placed on probation until one of the loans is paid in full.

(3) Second merchandise loans for the purpose of facility expansion will be limited to 50% of the cost of additional salable merchandise needed.

(~~h~~e) If a licensed manager wishes to provide his or her own merchandise and will not require a merchandise loan, he or she must sign a statement to that effect.

612:25-4-28. Method of payment for initial stock [REVOKED]

~~(a) The licensed manager will be offered two options for initial stocking of the business enterprise. These options are:~~

~~(1) **Option A.** the licensed manager agrees to reimburse the SLA for stock provided and thereby secures title to the stock; or~~

~~(2) **Option B.** the licensed manager purchases the stock directly.~~

~~(b) In selecting Option A the licensed manager establishes an equity in the stock. When the licensed manager leaves the business enterprise, he/she will receive equity in the stock (ending inventory less merchandise loan balance, Option A) less any unmet obligations to the SLA such as set aside charges.~~

~~(c) Merchandise must be salable to be included in the closing inventory.~~

~~(d) In the event of the licensed managers death, his estate will be entitled to a settlement based upon the same terms and conditions.~~

~~(e) The licensed manager or his/her designated beneficiary may request a hearing when dissatisfied with the determination of the amount to be paid by the SLA for a licensed manager's ownership in stock.~~

~~(f) The licensed manager may not permit the ownership of the stock to vest in any person or organization other than the SLA.~~

612:25-4-29. Failure of licensed manager to repay loan [REVOKED]

~~(a) If a licensed manager is two (2) payments in arrears with the merchandise loan payment, the licensed manager is not eligible to make application into the selection process.~~

~~(b) If a licensed manager is three (3) months in arrears, with the merchandise loan payment, the licensed manager is placed on probation.~~

~~(c) If a licensed manager is four (4) months in arrears with the merchandise loan payment, the licensed managers agreement is subject to termination, the license may be suspended/terminated and the loan sent to the legal department for collection.~~

~~(d) When a licensed manager leaves the program for any reason, the merchandise loan is due in full. However arrangements may be made with the SLA to divide the balance into 24 equal payments that will be due on the first of each month.~~

~~(e) If a licensed employee or licensee's merchandise loan is not current, he/she is not eligible to apply for a business enterprise.~~
~~(f) If a licensed employee or licensee is three (3) payments in arrears, The BEP license is subject to suspension.~~
~~(g) If a licensed employee or licensee does not make a payment for one year, the BEP license will be terminated and loan forwarded to the legal department for collection.~~

612:25-4-30. Second merchandise loan [REVOKED]
~~(a) Under documented extreme circumstances, a licensed manager who has paid off his/her previous merchandise loan, may receive a second (2nd) merchandise loan for the same facility when it has been determined that the merchandise loan is necessary to allow the licensed manager to remain in his/her facility as manager.~~
~~(b) If a licensed manager requires a 2nd merchandise loan while the first loan is still outstanding, other than for the expansion of his/her facility, he/she will automatically be placed on probation until one of the loans is paid in full.~~
~~(c) When a licensed manager moves from one location to another, the licensed manager will be given a merchandise loan based on need. If the manager has an outstanding loan, the SLA will not make a 2nd merchandise loan unless such loan has been approved by 3/4 of the Selection Committee and the BEP Programs Manager. However the new and old merchandise loans will not be combined. If the first (1st) merchandise loan is not clear when the inventory is extended, the licensed manager will be placed on probation.~~
~~(d) If a facility expands, the SLA will provide a merchandise loan to cover the additional saleable merchandise needed.~~

PART 9. ASSIGNMENT AND TRANSFER OF LICENSED MANAGERS

612:25-4-53. ~~Promotion~~Assignment, promotion and transfer policy
(a) ~~**Promotion.** It is the SLA's policy to promote any "Licensee" to a better location when he/she has demonstrated the ability to manage a more complex operation. Selection for promotion is made by the Business Enterprise Program Selection Committee.~~**Assignment.** The State Licensing Agency (SLA) administers a competitive selection process to accomplish the assignment of qualified individuals to manage Business Enterprise Program (BEP) vending facilities. The selection process established by the SLA provides that the Elected Committee of Blind Managers (ECM) is an active participant in the selection of facility managers.
(b) ~~**Transfer.** It is the SLA's policy to transfer licensed managers to different locations of substantially the same complexity and income potential when it appears to be in the best interest of the licensed manager and/or the BEP. The SLA notifies the licensed manager in writing by registered or certified mail, return receipt requested, of a transfer and the grounds therefore.~~ **Promotion.** It is the SLA's policy to provide promotion opportunities for licensees through use of the established competitive selection process.
(c) **Transfer.** The SLA, in consultation with the ECM, may transfer a licensed manager to a different location of similar complexity and income potential when it appears to be in the best interest of the licensed manager and/or the BEP. The SLA notifies the licensed manager in writing by registered or certified mail of a transfer and the grounds for the transfer.

612:25-4-54. Business enterprise vacancy announcement
(a) The procedure for announcing business enterprise openings is a mail out to all licensed managers, licensed employees, and licensees on the mailing list.
(b) The announcement period will be ten working days. ~~The BEP Programs Manager and the Chairperson of the Elected Committee of Licensed Managers may issue an announcement for a shorter period of time due to extenuating circumstances. The closing date for the vacancy will be stated on the announcement.~~
(c) The information in (1) through ~~(10)~~(9) of this Subsection will be contained on each announcement.
(1) type of business enterprise;
(2) estimated number of employees in the building and/or traffic flow unless security considerations prohibit release of such information;
(3) location of the business enterprise;
(4) classification;
(5) average gross sales as reported on monthly report;
(6) for a new business enterprise, estimates of monthly net sales based upon potential patronage, with disclaimer this estimate is not a guarantee of sales;
(7) application due date;
(8) name and telephone number of the BEP business consultant ~~Consultant~~; and
(9) name and work phone number of the current manager. ~~Unlisted phone numbers will not be listed on the announcement without prior approval of the Licensed Manager.~~
~~(10) according to policy Chapter 612:25-4-59 paragraph (g); Any agreement made to the selection committee by a candidate will be transferred to an addendum in the operator's agreement if selected to manage the facility.~~

612:25-4-55. Qualifications
(a) In order to apply for placement as a licensed manager in the Business Enterprise Program (BEP), an individual must hold a current license issued by the State Licensing Agency (SLA) ~~SLA~~. In addition, the SLA requires experience in the program before an individual will be considered eligible to apply for "A" and "B" classification business enterprises. A new location is to be classified "C" for the initial 90 days of operation. Experience requirements for each classification are:
(1) Classification A. Applicants will be restricted to individuals who have a minimum of three (3) years total experience in an Oklahoma business enterprise including a minimum of one (1) year of management experience.

(2) Classification B. Applicants will be restricted to individuals who have a minimum of two (2) years total experience in an Oklahoma business enterprise, including a minimum of six (6) months of management experience, or two (2) years additional employment in a business enterprise may be substituted for the management experience.

(3) Classification C. No experience required, except on new locations as determined by the Selection Committee.

(4) Classification D. No experience required.

(b) The Selection Committee may require prior business enterprise experience on applications for any facility including new locations. Verified experience in a business enterprise in another state may be considered by the selection committee.

(c) A displaced licensed manager will have ~~priority~~"15" points added in the selection process for a comparable business enterprise, including type, size and geographical location, for one year from the date of displacement.

(d) Applicants will not be eligible to apply for a business enterprise facility if any of the following conditions exist:

(1) The licensed manager is on probation or the SLA has initiated suspension/termination proceedings against the licensed manager.

(2) The applicant is not current with their merchandise loan payments.

(3) The applicant is not current with his/her set-aside owed to the SLA.

~~(4) The applicant has not submitted a business plan for their current business enterprise facility.~~

(~~5~~4) The applicant has not scored at least an 80 on the annual evaluation.

(~~6~~5) Conditions ~~1-5~~1-4 will not apply to new BEP training graduates.

(e) Applicants must be eligible to obtain an Oklahoma Tax Permit.

612:25-4-56. Applications

(a) Applications must be received in the BEP Headquarters by the deadline date and time in order to be considered. The applications may be mailed, facsimiled or hand delivered. ~~Phone applications will be accepted prior to the deadline, however the applicant must sign an application form prior to being interviewed by the Selection Committee.~~

(b) Applications received before the announcement expiration date and time are reviewed to determine if the applicant meets the basic qualifications.

(c) All eligible applicants will be scheduled for an interview with the Selection Committee. Applicants who do not meet the basic qualifications will be notified in writing.

612:25-4-57. Applicant Selection Committee

Selection Committee. The Selection Committee shall be established and convened by the SLA. The Selection Committee will consider applicants for assignment and transfer. The Selection Committee shall make recommendation(s) to the SLA or designee.

(1) The BEP selection committee is chaired by the BEP ~~Programs Manager~~Operations Coordinator or designee. Members include ~~the area BEP business consultant or designee, the BEP administrative staff person in charge of training or designee~~two members of the SLA staff, the area member of the ECM or alternate and the chairperson of the ECM or vice-chair or secretary. No person can serve on the selection committee who has a conflict or interest or is related to an applicant.

(2) In the event the ~~Area~~area member of the ECM or the alternate cannot attend or serve, or is related to an applicant, another ECM member or alternate may be called as a substitute member to be determined by the Chairman of ECM. In the event that no member of the ECM can serve the SLA shall poll from the ECM chairs outside of the State of Oklahoma to complete the committee.

612:25-4-58. Annual Evaluation

(a) The BEP ~~consultants~~ will conduct an annual evaluation of each business enterprise manager ~~in his/her area~~. The manager will be evaluated in the following areas:

(1) Tasks/responsibilities

(A) Timely submission and accuracy of all required monthly reports and ~~Payments~~payments.

(B) ~~Appropriate~~Accurately calculated gross profit percentage ~~attained as~~ reported on monthly reports.

(C) ~~Appropriate~~ Accurately calculated net profit percentage ~~attained as~~ reported on monthly reports.

(D) ~~Maintains~~Maintenance of an acceptable level of merchandise inventory.

(E) Attendance at Agency and other certified training.

~~(F) Active participation in the Business Enterprise Program.~~

(2) Work Habits

(A) Provides preventive maintenance and appropriate cleaning/sanitation.

(B) Merchandise displayed, rotated and stocked sufficiently.

(C) Maintains required insurances.

(D) Maintains agreed upon hours of operation.

(E) Maintains ~~good~~professional~~relations~~relationships with customers and grantors.

(b) Any business enterprise manager not receiving at least 80points of the available 100 points on an annual evaluation will not be eligible to apply for a business enterprise facility during the current evaluation year.

(c) Any score above 80obtained by the licensed manager will accrue to the benefit of the licensed manager in any selection process during the current evaluation year.

612:25-4-59. Interview, Selection Process and Scoring

(a) All eligible applicants will be referred by the SLA to the Selection Committee for a personal interview.

(b) All personal information made available to the Selection committee and all information discussed in the course of a selection is held confidential. Information will not be released to any other individual, agency, or organization by Selection

Committee members, unless they are advised by legal counsel to release information.

(c) An applicant not present for the interview will have his/her name removed from consideration for this location.

(d) Following every interview, each Selection Committee member will complete a score sheet on the applicant. Members of the Selection committee must complete their own score sheets before assisting another member. After each interview, the scores from all score sheets on the applicant will be totaled. Selection Committee members may not change their scores for an applicant after scores for the applicant have been tabulated. The total scores for all applicants will then be ranked.

(e) Any candidate not scoring a minimum of 50 percent of the available points, not considering the points given for number of years in the program, will be considered not qualified to manage the facility being considered.

(f) The BEP ~~Programs Manager~~Operations Coordinator/Chairperson of the Selection Committee or designee's score will not be added into the ranking unless it is a tie.

(g) Any agreement made to the ~~selection committee~~Selection Committee by a candidate will be transferred to an addendum in the manager's agreement if the candidate is selected to manage the facility.

(h) After all applicants' scores from the initial interview have been tabulated, any applicant whose total score is within 5 points of the applicant receiving the highest score will be awarded a second interview. The SLA will have the responsibility of convening the Selection Committee and notifying all eligible applicants of the time and place of the second interview. The second interview will be governed by the same process rules as the initial interview described above.

(i) After the second interview has been completed the combined scores of the first and second interviews of each applicant will be added together and divided by two (2) to determine the final rankings of the applicants. ~~The names of the two top scoring applicants will be submitted to the BEP Programs Manager in order of ranking. The BEP Programs Manager may choose either applicant submitted.~~

~~(j) The BEP Programs Manager may re-interview each of the two candidates before making a final decision. However, the decision cannot be extended more than 5 working days following the second interview.~~

(~~k~~j) The scoring shall be based on the following factors:

(1) Personal interview;

(2) ~~Business~~Management Plan;

(3) ~~Annual licensing/training~~ Monthly location reviews and annual evaluation; and

(4) Seniority.

612:25-4-60. Ninety day replacement

If the licensed manager defaults on the ~~licensed managers~~Manager's Agreement for any reason (i.e. resignation, removal by the SLA or death) during the first 90 days from the date of selection, the BEP ~~Programs Manager~~Operations Coordinator will, following such default and completion of any resulting due process action, offer the business enterprise to the second of the two candidates submitted by the Selection Committee during the previous selection process. If the second person decides to remove his/her name for consideration, it will be offered to the next applicant with the highest accumulated points. In the event of a tie, the BEP ~~Programs Manager~~ Operations Coordinator and Chairperson of the Elected Committee of Licensed Managers will review the applications and make the final selection. This procedure will be exercised until a qualified licensed manager accepts the business enterprise. If all the applicants have removed their names from consideration, a determination will be made by the BEP ~~Programs Manager~~ Operations Coordinator to remove, re-announce, or satellite the business enterprise.

612:25-4-61. Satellite/remote business enterprise locations

(a) A business enterprise or vending machine facility will be assigned to a licensed manager on a temporary basis when the regular selection process does not produce a permanent licensed manager, when a licensed manager has been removed by the SLA, or when a business enterprise is vacated on short notice by a licensed manager and the time element to follow the regular selection process will cause the grantor to terminate the permit/contract with the SLA.

(b) The BEP ~~Programs Manager~~Operations Coordinator, in consultation with the Chairperson of the Elected Committee of Licensed Managers, may assign a licensed manager to a satellite/remote business enterprise on a temporary basis. The length of the agreement for a temporary assignment will be until the regular selection process can generate a permanent licensed manager to manage the vacant business enterprise, ~~with a minimum of~~but not less than 90 days. At the SLA's discretion, in consultation with the ECM Chair, in order to achieve an equitable distribution of satellite business enterprises, a licensee that currently operates a location and a satellite will not be eligible for an additional satellite unless there are no other applicants.

(c) After the ~~selection process is completed~~ temporary assignment of a licensed manager by the BEP Operations Coordinator, a temporary agreement will be issued for a maximum of one year, at which time the satellite business enterprise will be advertised and a permanent licensed manager selected through the normal selection process. At the end of one year, if a permanent licensed manager is not produced through the selection process, the temporary location may be closed, added permanently to another business enterprise through the selection process, or again be placed on a temporary agreement for a maximum of one year.

(d) The temporary agreement for a satellite business enterprise may be canceled only for cause shown.

(e) The licensed manager may resign the satellite agreement with ~~20~~30 days written notice.

(f) The satellite business enterprise will be managed as a separate business location for all purposes except for insurance and the tax permit. It is the licensed manager's responsibility to notify the Oklahoma Tax Commission and his or her insurance carrier of the addition.

~~(g) When a licensed manager is managing a satellite location, travel expenses to go between the two business enterprises~~

~~will be considered a business expense of the satellite/remote location at the state rate.~~

612:25-4-62. Vending machine income

(a) ~~Vending machine income from vending machines on Federal property which has been disbursed to the SLA by a property manager under the vending machine income sharing provisions of the Federal Regulations shall accrue to each licensed manager operating a business enterprise on Federal property in an amount not to exceed the average net income of the total number of licensed managers, as determined each fiscal year on the basis of each prior year's operations, except that vending machine income shall not accrue to any licensed manager in any amount exceeding the average net income of the total number of licensed managers in the United States.~~Collection, distribution and use of income from vending machines on Federal property shall be governed by applicable Federal rules.

~~(b) No licensed manager shall receive less vending machine income than he/she was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this ceiling.~~

~~(c) One hundred percent (100%) of all vending machine income from vending machines on Federal property which are in direct competition with a business enterprise operated by a licensed manager will accrue to the SLA which shall disburse such income to such licensed manager operating such business enterprise on such property provided that the total amount of such income accruing to such licensed manager does not exceed the maximum amount determined under 34 CFR 395.8(a). In the event that there is income in excess of the maximum amount which may be disbursed to the licensed manager under 34 CFR 395.8(a), such additional income shall accrue to the SLA for purposes determined in accordance with 34 CFR 395.8(c).~~

~~(d) The SLA will disburse vending machine income to qualifying licensed managers on at least a quarterly basis.~~

~~(e) Vending machine income retained by the SLA will be used in accordance with applicable Federal regulations.~~

(~~f~~b) Unassigned income from non-Federal property is used to develop and enhance the BEP.

PART 11. BUSINESS ENTERPRISE PROGRAM AUDITING AND DUE PROCESS

612:25-4-73. Due process

(a) **Due process overview.** The SLA provides procedures for fair hearings of licensed managers' grievances. These procedures provide each licensed manager the opportunity to seek remediation of dissatisfaction with any SLA action arising from the operation of the BEP.

(b) **Informal administrative review.** It is the policy of the SLA to resolve complaints in an expeditious and facilitative manner. These resolutions shall be accomplished through the informal administrative review process whenever possible. A licensed manager has the right to request a full evidentiary hearing at any time within established due process time lines.

(1) Informal administrative reviews are conducted by the SLA staff person closest to the problem who was not involved in the action resulting in the complaint, and who can resolve the complaint in the most expeditious manner.

(2) The informal administrative review is to be completed within 45 calendar days of receipt of the complaint to the appropriate SLA staff person.

(3) The results of the informal administrative review are to be reported in writing to the BEP ~~Programs Manager~~ Operations Coordinator, with a copy going to the licensed manager affected.

(c) **Full evidentiary hearings.** ~~licensed~~ Licensed managers have the right to a full evidentiary hearing to resolve dissatisfaction with any SLA action arising from the operation or administration of the Business Enterprise Program.

(1) If the complaint cannot be resolved with an informal administrative review, or in the absence of an informal administrative review, the licensed manager may request a full evidentiary hearing. The request for a full evidentiary hearing must be made to the BEP ~~Programs Manager~~ Operations Coordinator in writing within 30 calendar days from the date the licensed manager receives the ~~written~~ notification of adverse action, or the written report of the informal administrative review. The request for a full evidentiary hearing is to be sent by certified mail.

(2) The licensed manager may be represented in the evidentiary hearing by legal counsel, or other representation of the licensed manager's choice, and at the licensed manager's expense.

(3) ~~Reader services or other reasonable~~Reasonable accommodations will be arranged by the SLA upon the request of the licensed manager.

(4) The hearing will be scheduled by the SLA for a time and place convenient and accessible to the licensed manager and the SLA staff involved in the hearing. The licensed manager will be notified of the place and time of the hearing and the right to be represented by legal or other counsel in writing.

(5) The hearing will be conducted by an impartial and qualified official with no involvement or vested interest in the SLA, action at issue, or with the operation of the affected business enterprise. The presiding officer will conduct the hearing in accordance with State and/or Federal laws and rules governing the conduct of such proceedings. In any case, the hearing will be conducted in a manner that avoids delay, maintains order, and provides for a full recording and reporting of the proceedings so that a full and true disclosure of the facts and issues occurs.

(6) The hearing officer's determination will be based upon the facts as presented by both parties and upon applicable law and the existing rules of the SLA. The hearing officer does not have the power to rule upon the legality or construction of the rules themselves. The officer's decision will determine the relevant issues and facts to be ruled upon.

(7) The hearing officer shall make a written report of the evidence presented, the laws and rules used in determining a resolution, and the resolution itself. This report

shall be issued to the BEP ~~Programs Manager~~Operations Coordinator and the licensed manager, or his/her authorized representative within 15 calendar days of the conclusion of the full evidentiary hearing.

(8) The hearing officer's report shall be issued to the Director of the SLA within 15 calendar days of the conclusion of the full evidentiary hearing. The SLA Director issues his or her final written decision to the BEP ~~Programs Manager~~ Operations Coordinator and the licensed manager within 30 calendar days of the date on which he or she receives the hearing officer's report.

(9) If the licensed manager is dissatisfied with the decision, she or he may request that the Secretary (USDE) convene an arbitration panel.

612:25-4-74. Probation [REVOKED]

~~(a) **Scope.** It is the SLA's responsibility to protect the taxpayer's investment from abuse and the interest of all Licensed Managers in the state. For these reasons, disciplinary actions/procedures have been established for licensed managers who refuse to follow rules, regulations, or specified procedures. A licensed manager who is not meeting all of the requirements or qualifications set forth in the rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary ladder. If proper results are not achieved, suspension or revocation of BEP License may be necessary.~~

~~(b) **Initiation of probation procedure.** The BEP Programs Manager will place licensed managers on probation through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, one copy returned to the BEP Programs Manager, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.~~

~~(c) **Probationary letter.** The probationary letter will specify by reference to specific sections of the rules and regulations, the violation(s) which prompted the probation. It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the charges, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.~~

~~(d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Programs Manager, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.~~

~~(e) **Consequences.** The business consultant may recommend to the BEP Programs Manager that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Programs Manager may recommend that:~~

~~(1) the SLA Director transfer the licensed manager to a more suitable business enterprise;~~

~~(2) the probationary period be extended; and/or~~

~~(3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.~~

SUBCHAPTER 6. LICENSED MANAGERS AND BUSINESS ENTERPRISE OPERATION

PART 1. LICENSED MANAGERS

612:25-6-1. Licensing requirements for managing a business enterprise

(a) **Definition of license.** A license is a written instrument issued by the SLA to a licensed manager, authorizing such person to operate a business enterprise on Federal or other property.

(b) **Issuance and conditions of a license.** A license shall be issued by the SLA in accordance with Federal regulations making the individual eligible to operate a business enterprise. The license shall be prominently displayed in the licensed manager's business enterprise. The license remains effective for an indefinite length of time, unless terminated, suspended, or revoked by the SLA in accordance with State and Federal regulations. A license issued to a qualified individual is non-transferable. Requirements for the issuance of a BEP license are that the individual:

(1) must be blind as verified by documentation;

(2) must be a U.S. citizen residing in the State of Oklahoma. ~~Birth certificate or other applicable~~Applicable documentation must be submitted with application;

(3) be at least 18 years of age or older;

~~(4) have completed all services on the Individualized Rehabilitation Program which may interfere with the training program;~~

~~(5) have documentation of independent living skills; and~~

~~(6) have basic math skills; and~~

(4) have successfully completed the BEP manager training program or been granted a modification of this requirement by the BEP operations coordinator.

(c) **Termination of agreement or removal from a business enterprise.** The SLA may terminate a manager's agreement and/or immediately remove the licensed manager from operation of a business enterprise for cause shown. Termination of a manager's agreement or removal from operation of a business enterprise does not necessarily mean that the manager's license

will be suspended or terminated. The licensed manager has the right to a full evidentiary hearing when dissatisfied with any State Licensing Agency action in accordance with BEP, State, and Federal regulations.

(d) **Reinstatement of license.** Reinstatement of a BEP ~~License~~license for ~~a retired~~an individual can be accomplished by formally requesting the SLA reinstate the BEP License within a two year period of the retirement date.

(e) **Termination of license.** A license automatically expires when the licensed manager is no longer a U.S. citizen, no longer meets the definition of legal blindness, surrenders his or her license, resigns, retires, or dies. A license may be terminated or suspended by the SLA, after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with State and Federal regulations.

612:25-6-2. Standards for licensed managers

(a) The licensed manager will agree to the terms of the licensed manager's agreement, rules and regulations governing the Business Enterprise Program, and the permit or contract governing the specific business enterprise.

(b) The licensed manager will operate the business enterprise in accordance with all applicable health laws and regulations, safety regulations and other federal, state, county, and municipality laws and regulations applicable to the business enterprise.

(c) The licensed manager will work cooperatively with authorized representatives of the SLA in connection with their official responsibilities, and maintain courteous and professional communications with SLA personnel.

(d) The licensed manager will take proper care of the equipment and fixtures to minimize repair and replacement costs. The licensed manager will be responsible for repair or replacement costs when caused by the negligence of the licensed manager or his employees, when repair~~s~~cost is below $25.00, or when repairs are not~~unauthorized~~authorized~~repair cost~~by the BEP. In the event of withdrawal from the business enterprise for any reason, the licensed manager will leave all SLA-owned equipment to the disposal of the SLA.

(e) The licensed manager will collect and pay sales tax as required.

(f) The licensed manager will be responsible for substitute operation.

(g) The licensed manager will not take action inconsistent with the paramount right, title, and interest of the SLA to business enterprise equipment.

(h) The licensed manager will accept the agreement subject to the policies, rules, and regulations of the SLA as they exist or are modified.

(i) The licensed manager will keep daily records of gross sales, merchandise purchased, and ~~expenses~~ other financial transactions for the business enterprise.

(j) The licensed manager will complete and submit all necessary Federal and State reports and payments as required for each individual business enterprise.

(k) The licensed manager ~~will dress and maintain a level of personal hygiene which~~ will convey a positive public image.

(l) The licensed manager will maintain appropriate professional relationships with purveyors, customers, and building officials as in (1) through (3) of this Subsection.

(1) **Relationships with purveyor.** The licensed manager is free to choose the purveyor from whom he/she is to make purchases, provided, however, that such purveyor is established and reputable.

(2) **Relationships with customers.** To serve the best interest of the public, the licensed manager and his/her employees must provide prompt, cheerful and courteous service to all customers~~ and accommodate, within reasonable limits, such other persons who may come to the business enterprise requesting change, information, or other services~~.

(3) **Relationships with building officials.** ~~Units (i) and (ii) of this Subparagraph provide guidance in maintaining a productive relationship with building officials.~~

~~(A)~~ The licensed manager must comply with all reasonable requests concerning the operation of a business enterprise that may be made by officials of the building in which the enterprise is located, provided that such requests do not conflict with the agreement and the rules and regulations issued by the SLA as contained herein.

~~(B)~~ If differences should arise between the licensed manager and the grantor, the licensed manager shall bring the matter to the immediate attention of the BEP business consultant for appropriate action.

(m) The licensed manager will supervise employees in a manner that promotes quality customer service.

(n) The licensed manager will maintain and display current licenses and permits, including BEP license, in the business enterprise.

(o) The licensed manager will comply with all regulations and laws governing the possession and/or use of firearms, weapons, alcohol and other drugs.

(p) When a licensed manager starts or buys a similar business, the licensed manager must ~~report the nature and location of the business and~~ make assurances to the SLA that the two businesses will not intermingle in any manner and the merchandise of the two businesses will be in separate locations. At no time will state owned equipment be used in the private business.

612:25-6-2.1. Probation

(a) **Scope.** A licensed manager who is not meeting all of the requirements or qualifications set forth in the BEP rules and regulations, or a licensed manager who is not managing the business enterprise in a proper manner, may be placed on probation. Intensive review/consultation will be provided during the probationary period. The period of the probation will be used to focus on specific problem areas and attempts will be made to improve the licensed manager's performance. This is the first step in the disciplinary ladder. If proper results are not achieved, suspension or revocation of BEP License may be necessary.

(b) **Initiation of probation procedure.** The BEP Operations Coordinator will place licensed managers on probation

through a probation letter. The business consultant will deliver, read and explain the letter of probation to the licensed manager. The business consultant and licensed manager will then sign the probation letter. The original is given to the licensed manager, one copy returned to the BEP Operations Coordinator, and one copy mailed to the Chairperson of the Elected Committee of Licensed Managers.

(c) **Probationary letter.** The probationary letter will specify the cause(s) for placing the manager on probation and rules that have been violated (if any). It will clearly state the terms of the probation, including the length of the probationary period, the remedial action required and the consequences of failure to take remedial action. A statement will be included which indicates it has been read and understood by the licensed manager, followed by a space for the licensed manager's and business consultant's signature, and the date. This acknowledgement does not imply that the licensed manager agrees with the charges, but rather, that he/she understands the terms of his/her probation. Refusal to sign does not invalidate the letter.

(d) **Probationary periods.** Probationary periods are usually 30 to 90 days, at the discretion of the BEP Operations Coordinator, but may be longer or shorter as circumstances warrant. The exact period of probation will be specified in the probationary letter.

(e) **Consequences.** The business consultant may recommend to the BEP Operations Coordinator that the licensed manager be taken off probation whenever the licensed manager's performance improves to a satisfactory level. If remedial action does not result in improved performance within the time specified, the BEP Operations Coordinator may recommend that:

(1) the SLA Director transfer the licensed manager to a more suitable business enterprise;

(2) the probationary period be extended; and/or

(3) the SLA Director terminate the Managers Agreement and suspend/terminate the licensed manager's BEP license.

612:25-6-3. Grounds for suspension or termination of a license

(a) A BEP license may be suspended or terminated for the reasons set forth in (1) through ~~(14)~~(13) of this Subsection.

(1) Failure to open the assigned business enterprise as stated in the permit/contract with the grantor agency, without prior proper approval from the SLA (abandonment of business enterprise).

(2) Defrauding any agency of the government (including the SLA) or any purveyor or failure to pay monies due including taxes, fees, or assessments to any governmental entity or purveyor.

(3) Failure to file required financial and other records with the SLA or preserve them for a specified time, and failure to comply/cooperate with audits conducted by the SLA or other State or Federal agencies.

(4) Failure to maintain the required insurance coverage.

(5) The business enterprise is not being operated in accordance with the rules and regulations, terms and conditions of the permit with the grantor agency, or the terms and conditions of the business enterprise manager's agreement.

(6) Intentional abuse, neglect, unauthorized use or removal of the business enterprise equipment; or failure to properly maintain the equipment in a clean and operating manner within the scope of the licensed manager's level of maintenance authorization.

(7) Substance abuse (alcoholic beverages, illegal drugs, etc.) while operating the business enterprise; or other substance abuse that interferes with the operation of a business enterprise.

(8) Operation of a business enterprise in such a way that the SLA's ~~investment~~interest in retaining the contract for the location is obviously endangered.

~~(9) An attempt by a licensed manager to derive personal benefit from privileged information acquired through participation in the Business Enterprise Program.~~

(~~10~~9) Failure to comply with all Federal and State laws prohibiting discrimination and failure to provide services without regard to race, gender, color, national origin, religion, age, political affiliation, or disability.

(~~11~~10) Determination by the SLA that the licensed manager no longer has the necessary skills and abilities for effectively managing a business enterprise.

(~~12~~11) Use of the business enterprise to conduct unlawful activities.

(~~13~~12) Failure to personally operate and manage the business enterprise in accordance with the manager's agreement. Management means the personal supervision of the day-to-day operation of the assigned BEP facility by the assigned manager.

(~~14~~13) Does not actively work as a licensed manager or licensed employee in the Business Enterprise Program for 2 years.

(b) When the BEP Operations Coordinator determines that a BEP license should be suspended or terminated, the BEP Operations Coordinator shall make a written recommendation to the Division Administrator. The Division Administrator shall then recommend to the SLA Director for action. The licensed manager shall be notified in writing if action is to be taken. The BEP license may only be suspended or terminated after affording the licensed manager an opportunity for a full evidentiary hearing in accordance with BEP Rule 612:25-4-73. The licensed manager may be immediately removed from the operation pursuant to BEP Rule 612:25-6-1(c) pending the outcome of the evidentiary hearing.

612:25-6-5. Motor vehicle operation

~~All licensed managers, licensed employees, licensee or trainees of business enterprises will not operate a motor vehicle on any public street or highway. If it is determined that a licensed manager, licensed Employee, licensee or trainee of a business enterprise has operated a vehicle for which a state driver's license is required on any public street or highway, his/her licensed manager's agreement and/or BEP License will be subject to revocation, suspension, or termination.~~No individual who obtains or possesses a valid driver's license or who lawfully or unlawfully operates a motor vehicle on any public

street or highway shall be eligible to participate in the Business Enterprise Program as a licensed manager, licensed employee or trainee. If it is determined that a licensed manager, licensed employee or trainee of a business enterprise has violated this provision, he/she will be immediately removed from the operation and his/her manager's agreement and/or BEP license will be subject to revocation, suspension or termination.

PART 3. BUSINESS ENTERPRISES

612:25-6-15. Setting aside of funds

(a) Set-aside charges paid by the licensed manager will be placed in a revolving account maintained by the SLA. Set-aside charges will be re-evaluated yearly by the SLA and the Elected Committee of Licensed Managers. Adjustments will be made accordingly in the appropriate classification, with allowances for reasonable charges for improving services, fluctuation of costs, and for program expansion.

(b) Funds will be set aside only for the purpose of:

(1) maintenance and replacement of equipment;

(2) the purchase of new equipment;

(3) management services;

(4) assuring a fair minimum of return to licensed managers; or

(5) the establishment and maintenance of retirement or pension funds~~,~~ and health insurance contributions~~, or provisions for paid sick leave and vacation time~~.

(c) The licensed manager's set-aside charges will be on a sliding scale of 0% to not more than 12% of the net proceeds of the business enterprise during any one month. The sliding scale will be in four classifications: Class A, B, C, and D (based on prior year's performance).

(1) Class A - 12% of net proceeds, ~~$26,000~~$60,000 and above.

(2) Class B - 10% of net proceeds, ~~$15,000~~ $$25,000 to ~~$25,999~~$59,999.

(3) Class C - 6% of net proceeds, ~~$4500 -~~ $10,000 to ~~$14,999~~$24,999.

(4) Class D - 0% of net proceeds, ~~$4499~~$9,999 and below.

(d) ~~When a~~A licensed manager ~~timely~~ will~~submits~~ submit his/her set-aside payment to the BEP by the 25th of the current calendar month~~, the manager's set-aside obligation will be reduced by 1% of the set-aside amount due that month~~. ~~However, if~~If the set-aside payment is late the SLA shall notify the manager by phone on the next business day following the due date. If the set-aside payment is not received in the BEP office within~~ten~~five days~~ or more~~ after the due date, the licensed manager will be ~~assessed a late fee in the amount of 20% of the set-aside due for that month~~placed on probation and assessed a $50 late charge. If the licensed manager's overdue set aside payment is ~~60 days late, the licensed manager will be placed on probation until their set-aside payments to the agency are current. If the licensed manager's set aside payment is more than 90 days late his/her operating agreement will be suspended or terminated by the BEP Programs Manager~~not received in the BEP office withinfive days after the due date in the succeeding month (i.e. is over one month and five days late), the manager is assessed another $50 late fee. If the first and second payments are not received by the time the third report is due, the licensed manager's agreement will be cancelled and the BEP licenses will be suspended, unless an alternate payment schedule has been approved in advance by the SLA. Failure to pay monthly set-aside in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

(e) If a business enterprise should show a marked change in net proceeds, a request for reclassification may be made by the licensed manager or the SLA after 90 days. Each licensed manager will be notified of changes in set-aside charges, and the new percentage of net proceeds will be effective at the beginning of the first business month following the mailing of notice to the licensed manager. The licensed manager will start paying the higher or lower percentage of set-aside with the second report due following notification.

(f) All new business enterprises will be placed in class C for 90 days, at which time the SLA will review the business enterprise for reclassification and notify the licensed manager of changes in set-aside charges and the new percentage of net proceeds shall be effective at the beginning of the first business month following the mailing of notice to the licensed manager.

612:25-6-16. Criteria to establish a business enterprise

~~A suitable site for a new business enterprise will be selected after the business consultant makes a thorough study of the location~~ A decision to establish a business enterprise will be made by the State Licensing Agency (SLA) in consultation with the ECM based on the Business Enterprise Program (BEP) calculation of potential business profitability, estimated installation costs, available SLA resources and the BEP's recommendation.~~A~~Information used for calculation of business profitability will be obtained by BEP staff using a site survey ~~form will be completed. This survey~~ that will include:

(1) building population;

(2) number of visitors;

(3) competition in the immediate area;

(4) building security;

(5) average salary of prospective customers;

(6) estimated installation cost to provide required services;

(7) stability of number of prospective customers;

(8) longevity of potential facility; ~~and~~

(9) geographic location~~.~~; and

(10) additional information as determined necessary.

612:25-6-18. Establishing new licensed managers in business enterprises

~~(a) **Site selection, planning, and initial stocking.** After the business consultant designs, plans and makes specifications for a business enterprise, he/she submits the plans and specifications for approval to the BEP Programs Manager. The business consultant will assist the support services supervisor in~~

~~preparing requisitions for submission to purchase new equipment and building fixtures. This applies to equipment, merchandise, electrical installation, plumbing installation, repairs, etc. The SLA will provide each business enterprise with adequate suitable equipment and initial stock as required by federal law. When stocking these business enterprises, all purchases will be made in accordance with DRS rules and state law.~~

~~(b) **Establishment of a licensed manager.** The establishment of a licensed manager will normally be by the business consultant in whose area the business enterprise is located. Before assuming the operation of any business enterprise, the licensed manager must sign an application and agreement with the SLA. The agreement provides, among other things, for the payment each month of a set aside charge for the use of the equipment furnished by the SLA. The business consultant will remain at the business enterprise for a sufficient time to assure a smooth business operation. The licensed manager, if possible, will be available one week prior to the opening of a new facility to become familiar with the business enterprise, consult with the business consultant regarding the operation, and assist in purchasing the initial stock of merchandise. Every effort will be made to provide customers of operating business enterprises with uninterrupted service during the change of licensed managers. If the business enterprise is closed for inventory, prior arrangements must be made with grantor.~~

~~(c) **Installation process.** The business consultant will complete a change over sheet for each installation completed. The business consultant will insure that all address, phone numbers and other related information are correct. The business consultant will assist licensed manager in filling out any insurance or retirement enrollment or change cards as necessary. The licensed manager is given a copy of the permit/contract. The licensed manager is given a supply of the forms required by the SLA relative to the business enterprise operation. The business consultant will verify that workers' compensation, general and product liability insurance on the business enterprises are in effect. The business enterprise will not be opened by the new licensed manager until this can be verified.~~

~~(d) **Managers agreement.** When all of the requirements in (a) through (c) of this Section have been met, the licensed manager must sign a licensed managers agreement before assuming the operation of any business enterprise. Before signing, the licensed manager will read or have read to him/her by the business consultant the licensed managers agreement.~~

~~(e) **Merchandise inventory.** The licensed manager will be advised of the two optional methods of initially stocking the facility. An accurate merchandise inventory is completed, then signed by both the incoming and outgoing licensed managers, accepting the count of merchandise. The outgoing licensed manager, incoming licensed manager or designee, and a representative from the SLA must be present when merchandise is counted. The SLA has the option to purchase the licensed manager's stock at wholesale cost to be fixed by two persons, agreed upon by the licensed manager and a representative of the SLA.~~

~~(f) **Equipment inventory.** An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.~~

~~(g) **Merchandise inventory procedures.** The merchandise inventory shall be conducted by the business consultant with the assistance of the outgoing and incoming licensed managers. Any additional assistance will require approval from the BEP Programs Manager. If the facility is to be closed for the inventory, sufficient and proper notice (one week minimum) will be given to the customers and grantor. Items that are not to be included on inventory are deposits and personal equipment. Arrangements will need to be made between the outgoing and incoming licensed managers for these items. Receipts should be collected that day for pricing purposes. They should be returned to the outgoing licensed manager at the conclusion of the pricing phase.~~

~~(h) **Extending the inventory.** The extended inventory will be forward to the BEP Programs Manager within 10 working days of the date of the merchandise inventory. If more time is needed, a written request must be forwarded to the BEP Administrator explaining the circumstances for the delay and asking for an extension. The inventory will be extended to four (4) decimal places rounded to two (2). The inventory extension should be check at least 3 times for accuracy. If errors continue to occur, keep checking it until there are no more errors.~~Business Enterprise Program (BEP) staff will provide consultation and assistance to accomplish installation of licensed managers in business enterprises. Steps in the installation process will include the following:

(1) BEP staff will orient the new licensed manager to the business enterprise as needed.

(2) An inventory of the outgoing manager's merchandise will be performed by the outgoing and incoming licensed managers with assistance from the BEP. The outgoing licensed manager, incoming licensed manager or designee, and a representative from the BEP must be present when merchandise is counted. The completed merchandise inventory is signed by both outgoing and incoming licensed managers, accepting the count of merchandise.

(3) The BEP will assist the incoming licensed manager in procuring initial merchandise for sale and will arrange for the licensed manager to obtain a merchandise loan as necessary and in accordance with agency policy.

(4) An equipment inventory is completed and the incoming licensed manager signs the inventory sheet and assumes responsibility for the equipment.

(5) The BEP will assist the incoming licensed manager in filling out any insurance or retirement enrollment or change forms as necessary.

(6) The BEP will verify that workers compensation, general and product liability insurance on the business enterprise are in effect. The business enterprise will not be opened by the new licensed manager until this is verified.

(7) The BEP will provide the incoming licensed manager with a copy of the permit/contract in effect for the business enterprise.

(8) The BEP will provide the incoming licensed manager with a supply of the forms required by the SLA relative to the business enterprise operation.

(9) The incoming licensed manager must read and sign a licensed manager's agreement before assuming the operation of any business enterprise. If needed, BEP staff will read the agreement to the manager and/or provide the agreement in the accessible format required by the manager.

612:25-6-19. Employees of the licensed manager

(a) The ~~business consultant~~BEP has no direct responsibility over the ~~business enterprise~~ employees of licensed managers. If~~, in the course of an inspection or~~ a complaint is filed by a customer or grantor against ~~a business enterprise employee~~an employee of a licensed manager, or an employee-related problem is brought to the attention of BEP staff, the business consultant will bring the complaint/problem to the attention of the licensed manager. A business consultant may make suggestions as to the action that needs to be taken, however the responsibility lies with the licensed manager as to disciplinary action toward the business enterprise employee.

(b) In the event the grantor requests ~~a business enterprise~~an employee of a licensed manager be terminated/suspended, the information will be presented to the licensed manager immediately by personal contact or phone call followed by written memorandum indicating the reason for the requested suspension or termination. ~~If the licensed manager fails to terminate the employee, the licensed manager is subject to termination of the licensed managers agreement.~~

(c) The business consultant will immediately notify the SLA state office by memorandum for insurance and retirement purposes when a licensee/licensed employee starts to work for another licensed manager or quits.

(d) Licensed managers are to take affirmative action to employ and advance qualified individuals with disabilities ~~on the same conditions and regulations required in Section 503 of the Rehabilitation Act of 1964 [P.L. 88-352]~~ in accordance with applicable federal and state laws.

(e) Volunteer labor is permitted in a business enterprise~~,~~; however the volunteer must be covered by insurance in the event of injury. This insurance coverage will be documented in the SLA state office prior to the individual's actual work in a business enterprise.

612:25-6-20. Closing a business enterprise

(a) A business enterprise may be closed immediately by the SLA, the grantor, any government agency or the licensed manager when a life threatening situation, health or safety hazard exists. Notice of the closing should be made as soon as possible to the SLA and the grantor.

(b) The business enterprise will also be closed immediately for failure to have proper insurance verification for product and general liability and workers' compensation insurance.

(c) The business enterprise may be closed for short periods of time with prior written approval from the SLA and the grantor.

(d) The SLA's policy is to operate business enterprises that have the potential to produce net profit returns for licensed managers which will enable them to live self-sufficiently and with dignity within their communities. Additional consideration is given to the amount of return on investment as related to expenditures for capital outlay, management services overhead, and other expenses of operation. Anytime a licensed manager vacates a business enterprise, the business consultant will re-evaluate the business enterprise if it generates revenue below the program net profit objective. A business enterprise that lacks the potential to meet the SLA's net profit objective will ~~normally~~ be closed ~~unless a licensed manager would be satisfied with the business enterprise~~ or added to another location.

612:25-6-21. Business expenses

~~(a) All business enterprises will be so designed and stocked with merchandise that a licensed manager can purchase from wholesalers that deliver products to the location, and there will be minimal travel required by the licensed manager.~~

~~(b) All monthly report information must remain in the business enterprise during normal business hours. If a business deduction cannot be verified by the business consultant while in a business enterprise, the deduction will not be allowed, stricken from the report, and a revised report will be forwarded to the licensed manager to reflect the change.~~

~~(c) The expense column on the monthly report should reflect the actual expenses incurred by the business enterprise. The items claimed on the report should have documentation located in the business enterprise for the business consultant to review, (merchandise receipts, salaries, copies of the quarterly IRS and social security report, insurance invoice and policies, and etc.). If it is considered by the SLA that the amount of the expenses is excessive, the SLA may audit the business enterprise to determine that the expenses are actually required for that particular location.~~

~~(d) There will be no mileage or vehicle expense claimed as a business expense on the monthly report except as detailed at 612:25-4-61(g).~~

~~(e) The amount of telephone charges claimed on each monthly report will be limited to a total of $50.00 for all communication devices.~~

~~(f) If a licensed manager rents, leases, or buys equipment to enhance the business enterprise, the cost may be deducted as a business expense. The licensed manager must have prior written approval as per Section 612:25-4-25(h) and written notice will be given to the SLA accountant.~~ Business expenses calculated as a flat-rate percentage of gross sales may be deducted from gross sales on the licensed manager's monthly report to the SLA. The percentage of gross sales which may be reported as a business expense deduction shall be set by the Business Enterprise Program in consultation with the Elected Committee of Licensed Managers and shall be determined using historical data and industry standards. The percentage rate will be reviewed annually to ensure it continues to reflect average monthly expenditures attributable to standard business expenses.

612:25-6-22. Monthly reports

(a) **Content and when due.** Licensed managers must submit monthly business enterprise financial reports to the SLA. Reports will contain data on gross sales, merchandise purchases, payroll expense, business expense and other information determined necessary to reflect business financial status and calculate licensed manager set-aside, retirement and/or merchandise loan payments. The monthly reports shall be for one of the two following time periods: 1) the sixteenth (16th) day of the previous calendar month to the fifteenth (15th) day of the current calendar month; or 2) the twenty-first (21st) day of the previous calendar month to the twentieth (20th) day of the current calendar month. The licensed manager may choose either period, but must notify the business consultant which option is chosen by September 30th of each year. The licensed manager shall use the same option throughout the federal fiscal year. Monthly reports are due in the ~~business consultant's~~BEP office on or before the 25th of ~~each~~ the current calendar month. The BEP shall notify the manager by phone on the first business day following the 25th if the report is not received. The ~~business consultant~~BEP will review each monthly report for mathematical errors, correct loan payment, correct set-aside payment, approved business expenses, and other factors that will affect the accuracy of the report. The business consultant will sign the report indicating that the report is correct, correct payments are attached, and all items in question have been discussed with the licensed manager.

(b) **Failure to file in a timely manner.** ~~Continued late reporting may cause~~If the monthly report is not received in the BEP office within five days after the due date, the licensed manager will be placed on probation and assessed a $50 late fee. If the licensed manager's monthly report is not received in the BEP office within five days after the due date in the succeeding month (i.e. is over one month and five days late), the manager is assessed another $50 late fee. If the 1st and second reports are not received by the time the 3rd report is due (25th), the licensed manager's agreement will be canceled and the BEP licenses will be suspended. Failure to file monthly reports in a timely manner three or more times within any twelve month period will result in formal disciplinary action.

~~(c) **Corrective action for late reports.** Corrective action for late reports will be taken as described in (1) through (4) of this Subsection.~~

~~(1) If the report is not received by the 1st of the following month (5 days late), the business consultant will call the licensed manager to remind the licensed manager that the report is 5 days past due.~~

~~(2) If the report is not received by the 15th of the next month (20 days late), the business consultant will send a letter to the licensed manager asking for the report.~~

~~(3) If the report is not received by the next report due date (25th) (one month late) the licensed manager will be placed on probation.~~

~~(4) If the 1st and second reports are not received by the time the 3rd report is due (25th), the licensed manager's agreement will be canceled and the BEP Licenses will be suspended.~~

(~~d~~c) **Fee for reports.** The Agency maintains records for its use and may charge a reasonable fee to supply copies of records to individuals. The agency will supply copies of lost reports or other documents at 25 cents per ~~each side of a~~ page. ~~Copies of reports or other documents will be facsimile at a cost of $1.00 per page.~~

PART 5. THE ELECTED COMMITTEE OF LICENSED MANAGERS

612:25-6-32. The Elected Committee of Licensed Managers

(a) Authority for Establishing an Elected Committee of Licensed Managers (ECM) is found in Section 107-B1 of Chapter 6A of Title 20 U.S., commonly referred to as the Randolph-Sheppard Act.

(b) Paragraphs (1) and (2) of this Subsection provide guidance in approaching the degree of participation by the ECM.

(1) Active participation means a process of good faith negotiations involving the ECM and the SLA. The Committee must be given the opportunity to have meaningful input into the decision-making process in the formulation of program policies which affect licensed managers.

(2) The SLA is charged with the ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program.

(c) Functions of the Elected Committee of Licensed Managers include:

(1) Actively participate with the SLA in the major administrative, policy, and program development decisions affecting the overall administration of the Business Enterprise Program.

(2) To receive and transmit to the SLA grievances at the request of licensed managers and serve as advocates for such managers in connection with such grievances.

(3) To actively participate with the SLA in the development and administration of a State system for the transfer and promotion of licensed managers.

(4) To participate with the SLA in the developing training and retraining programs for licensed managers.

(5) To sponsor, with the assistance of the SLA, meeting and instructional conferences for licensed managers.

(6) To participate in setting out the method of determining the charge for each of the purposes listed in (A) through (E) of this Paragraph.

(A) Maintenance and replacement of equipment;

(B) The purchase of new equipment;

(C) Management services;

~~(D) Assuring a fair minimum of return to licensed managers; or~~

(~~E~~D) The establishment and maintenance of retirement or pension funds, health insurance contributions~~, and provision for paid sick leave and vacation time~~, if it is so determined by a majority vote of licensed managers, after the SLA provides to each licensed manager information on all matters relevant

to such proposed purposes. [34 CFR 395.9(b) and (c)]

(d) The ECM will be composed of licensed managers and licensed employees ~~based on such factors as geography and business enterprise type, with a goal of providing for proportional representation of licensed managers on Federal property and other property~~. There will be an executive committee with their duties and terms of office specified in the bylaws of the ECM.

(e) The SLA shall provide for the ~~biennial~~ election of an Elected Committee of Licensed Managers which shall be fully representative of all licensed managers in the BEP. [34 CFR 395.14]

612:25-6-33. Organization and operation of the Elected Committee of Licensed Managers

(a) **Organization.** The ECM will be organized ~~according to the provisions set forth in (1) through (7) of this Subsection~~in accordance with its bylaws.

~~(1) The ECM consists of five committee members and four alternate members.~~

~~(2) Representation of all licensed managers will be obtained by area districts. The districts are formed by dividing the state into four areas starting with a point to be determined and drawing a line east and west and north and south to the state borders. The four quadrants are divided in order to have as close to an equal number of business enterprises as possible. Each quadrant will have one ECM member and one alternate.~~

~~(3) The term of office for ECM members is two years. A member of the committee will not serve more than two consecutive terms in any one office.~~

~~(4) The fifth ECM member is elected at large and will be the Chairperson of the Elected Committee of Licensed Managers.~~

~~(5) The Vice Chairperson will be elected by and from the Elected Committee of Licensed Managers.~~

~~(6) When the Chairperson is not present, the Vice Chairperson will preside at the meeting and the alternate for the Vice Chairperson will represent the area of the Vice Chairperson.~~

~~(7) Elections will be held in the northeast and northwest districts on even numbered years. Southeast district, southwest district, and the member at-large elections will be held on odd numbered years.~~

(b) **Nominations and elections.** The procedures set forth in (1) through ~~(14)~~(3) of this Subsection shall be used to nominate and elect members of the committee.

(1) The ~~ECM~~ Chairperson of the Committee of Licensed Managers presides over the election of ~~the~~ Committee ~~of Licensed Managers~~members.

(2) ~~The election will be conducted annually at the licensed managers training conference.~~ The SLA presents ~~the districts for nomination and~~ a list of eligible voters and candidates ~~for each district~~. The Chairperson will call for nominations from the floor for ECM members. Nominees must give consent to be nominated. ~~The ECM members will receive advance written notice of the election.~~

(3) ~~A licensed manager or licensed employee is eligible to be a nominated candidate and to vote for the member at-large and one candidate for the ECM in the district in which his or her facility is located~~The SLA and the ECM are responsible for the collection and tallying of votes.

~~(4) The voting is by secret ballot. The ballot will contain the name of the nominees in their respective district and will be circulated and read by the SLA to each eligible voter.~~

~~(5) Eligible voters at the ECM meeting at the annual training conference, will mark their ballot or sign a written waiver if the licensed manager does not wish to vote.~~

~~(6) ECM members are elected by a majority vote of licensed managers present at the ECM meeting voting in the district in which their business enterprise is located. If a candidate does not receive a majority vote in the first election, a run-off election will be conducted. The candidate receiving the second highest number of votes will be the alternate ECM member.~~

~~(7) If no licensed manager or no licensed employee will accept the nomination for an ECM district, during the prescribed election process, the new Elected Committee of Licensed Managers will appoint an ECM member and alternate member to represent the district. If the ECM member appointed is the past ECM member and not eligible for a third term, the two-term limitation is waived for this term.~~

~~(8) If an ECM member or alternate ECM member is placed on probation for any reason, the ECM member or alternate ECM member will be suspended from participation with the Elected Committee of Licensed Managers during the period of the probation.~~

~~(9) licensed managers or licensed employees on probation are not eligible to run for any Elected Committee of Licensed Managers position.~~

~~(10) If an ECM member moves to another district, resigns from the Elected Committee of Licensed Managers, or resigns from his/her facility, the alternate ECM member will fill the ECM member's position for the remainder of the term and the Elected Committee of Licensed Managers will appoint a new alternate ECM member.~~

~~(11) The SLA is responsible for the collection and tallying of votes.~~

~~(12) Newly elected ECM members of the Committee of Licensed Managers will take office at the end of the annual training conference.~~

~~(13) The Elected Committee of Licensed Managers will appoint a new alternate ECM member for the district where there is a vacancy.~~

~~(14) If both the ECM member and the alternate ECM member resign, the Elected Committee of Licensed Managers will appoint licensed managers or licensed employees from the district to fill both vacancies.~~

~~(15) If an ECM member misses two (2) consecutive meetings, it is considered that he/she has resigned from the Elected Committee.~~

(c) **Operation.** The Elected Committee of Licensed Managers shall operate according to (1) through (3) of this Subsection.

(1) The Elected Committee of Licensed Managers will convene at least once each year at the licensed manager's training conference~~. The~~, the time and place of joint meetings to be scheduled by SLA staff and the Elected Committee of Licensed Managers. Requests for meetings by the ECM committee will be made in writing to the SLA for prior approval of financial assistance.

(2) The ECM members will be notified of matters within its purview that are being considered for decision. The ECM committee members will have the opportunity to initiate subjects for consideration by it and the SLA. Recommendations by the ECM members will be in writing and given serious consideration by the SLA.

(3) The SLA has the ultimate responsibility for the administration of the Business Enterprise Program. If the SLA does not adopt the views and positions of the Elected Committee of Licensed Managers it will notify the ECM Committee in writing of the decision reached or the action taken and the reasons therefore.

~~(4) A quorum will consist of three (3) of the members or alternates of the Elected Committee be present.~~

(d) **Materials.** The SLA will supply the necessary materials for the function of the Elected Committee of Licensed Managers upon written request to the SLA.~~ The Elected Committee of Licensed Managers may elect to carry on its functions through subcommittees.~~

(e) **Travel Expenses.** ECM members on committee business will be reimbursed for travel expenses at the same rates and conditions as state employees.

[OAR Docket #12-626; filed 5-11-12]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #12-699]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Reports
Part 7. Other Required Reporting
710:50-3-54 [AMENDED]
710:50-3-55 [NEW]
Subchapter 15. Oklahoma Taxable Income
Part 7. Credits against Tax
710:50-15-109 [AMENDED]
710:50-15-110 [AMENDED]
710:50-15-114 [NEW]
710:50-15-115 [NEW]
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Section 710:50-3-54 has been amended to correct a scrivener's error.

New Section 710:50-3-55 has been added to implement the provisions of House Bill 1284, providing for the reporting of transferable tax credits and allocated tax credits to the Tax Commission. **[68:2357.1A-1]**

Sections 710:50-15-109 and 710:50-15-110 have been amended to implement the provisions of House Bill 1008, which shortened the tax credit moratorium for the aerospace credits by one (1) year. **[68:2357.302, 2357.303 and 2357.304]**

New Sections 710:50-15-114 and 710:50-15-115 have been added to implement the provisions of SB 969, creating the *Oklahoma Equal Opportunity Education Scholarship Act*, which provides for an income tax credit for contributions to eligible scholarship-granting organizations or eligible educational improvement grant organizations. **[68:2357.206]**
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 7. OTHER REQUIRED REPORTING

710:50-3-54. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;
(E) A member of a limited liability company; or,
(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;
(B) A general partnership;
(C) A limited partnership;
(D) A limited liability partnership;
(E) A trust; or,
(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;
(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;
(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and
(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC*~~710:50-17-17~~710:50-19-1 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.
(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.
(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;
(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;
(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;
(4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;
(5) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;
(6) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,
(7) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar

quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-B~~s~~, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

710:50-3-55. Reporting the transfer or allocation of a tax credit

(a) **General provisions.** The transfer or allocation of any tax credit authorized pursuant to the provisions of Title 68 of the Oklahoma Statutes, except as otherwise provided in this Section, shall be reported to the Tax Commission.

(b) **Exceptions.** This Section shall not apply to the following tax credits:

(1) Sales Tax Relief Credit (68 O.S. § 5011)

(2) Low Income Property Tax Relief Credit (68 O.S § 2907)

(3) Earned Income Tax Credit (68 O.S. § 2357.43)

(4) Child Care/Child Tax Credit (68 O.S. § 2357)

(5) Credit for Taxes Paid to another State (68 O.S. § 2357)

(6) Credit for Property Taxes Paid on Tornado Damaged Residential Property (68 O.S. § 2357.29)

(c) **Report.** The transfer or allocation of any tax credit, on or after July 1, 2011, shall be reported to the Tax Commission (OTC Form 569) by the entity transferring or allocating the credit. Said form shall be filed on or before the twentieth day of the second month after the tax year in which an act occurs which allows the tax credit to eventually be claimed.

(d) **Transferable credits.** If the credit is transferable, the report shall state:

(1) Name of the taxpayer and taxpayer identification number to whom the credit is transferred;

(2) Tax type;

(3) Amount of credit;

(4) Statutory or other legal authority which forms the basis for the credit; and

(5) Any other information the Tax Commission may require.

(e) **Allocable credits.** If the credit is allocated, the report shall state:

(1) Identity of the shareholder, partner or member of the pass-through entity to whom the credit is allocated;

(2) Taxpayer identification number of the shareholder, partner or member of the pass-through entity to whom the credit is allocated;

(3) Whether the shareholder, partner or member of the pass-through entity to whom the credit is allocated is a pass-through entity;

(4) Tax type;

(5) Amount of credit;

(6) Statutory or other legal authority which forms the basis for the credit; and

(7) Any other information the Tax Commission may require.

(f) **Failure to file report.** If a taxpayer claims a credit on any state tax return that was not previously reported to the Tax Commission, pursuant to this Section, the Tax Commission shall disallow the credit and recompute the applicable tax liability including any penalty and interest; provided, upon the filing of the report, the credit shall be allowed.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 7. CREDITS AGAINST TAX

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 and before January 1, 2015, 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,~~2011 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~~2011. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, ~~2012~~2011 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~~2011. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, ~~2012~~2011 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~~2011, 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~~2011. Qualified employer may receive a tax credit for compensation paid for the period of July 1, ~~2012~~2011 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~~2011. Qualified employer may receive a tax credit for compensation paid for the period of July 1, ~~2012~~2011 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~~2011, 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, 2011, 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 2011, 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~~23) 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~~24) Credit for research and development jobs under 68 O.S. § 54006. See *OAC* 710:50-15-105.

(b) **Aerospace sector credits. .** No income tax credits for qualified employers and employees of the aerospace sector under 68 O.S. §§ 2357.302 through 2357.304 may be generated on or after July 1, 2010 and before July 1, 2011, for which the credit would otherwise be allowable. See *OAC* 710:50-15-109.

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

(~~c~~d) **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.

710:50-15-114. Credit for contributions to a scholarship-granting organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible scholarship-granting organization. [68 O.S. § 2357.206]

(b) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly, or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (d) of this Section.

(c) **Registration.** An eligible scholarship-granting organization is required to register with the Tax Commission (OTC Form 80002).

(d) **Limitation of credit.** If total credits claimed exceed $1,750,000 annually for single individuals and married individuals filing jointly, or $1,750,000 for all other taxpayers, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (e)(2) of this Section. At least once each taxable year, the eligible scholarship-granting organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(e) **Annual notification.**

(1) By January 10 each year, the scholarship-granting organization shall provide electronically to the Tax Commission:

(A) The scholarship-granting organization's account number;

(B) The name and social security number or federal employer identification number of each contributor; and

(C) The date and amount of each contribution.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The scholarship-granting organizations shall notify contributors of that amount annually.

(f) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible scholarship-granting organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(g) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(h) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

710:50-15-115. Credit for contributions to an educational improvement grant organization

(a) **General provisions.** An income tax credit is available for contributions to an eligible educational improvement grant organization. [68 O.S. § 2357.206]

(b) **Application.** An educational improvement grant organization shall submit an application to the Tax Commission (OTC Form 80001). The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

(c) **Credit.** The credit is generally fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000) for each taxpayer or Two Thousand Dollars ($2,000) for married taxpayers filing jointly or One Hundred Thousand Dollars ($100,000) for any taxpayer which is a legal business entity, subject to the limitation in (e) of this Section.

(d) **Two year commitment.** For a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for two (2) additional consecutive years, the credit shall be seventy-five percent (75%) of the amount of the contribution the first year, and fifty percent (50%) of the amount of the contributions the following two (2) years. The taxpayer shall provide evidence of the written commitment to the Tax Commission when the tax return claiming the credit is filed the first year.

(e) **Limitation of credit.** If total credits claimed exceed $1,500,000 annually, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year per (f)(2) of this Section. At least once each taxable year, the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total statewide cap on the amount of income tax credits allowed annually.

(f) **Annual notification.**

(1) By January 10 each year, the educational improvement grant organization. shall provide electronically to the Tax Commission:

(A) The educational improvement grant organization's account number;

(B) The name and social security number or federal employer identification number of each contributor;

(C) The date and amount of each contribution; and

(D) Whether the taxpayer made a written commitment to contribute the same amount for two (2) additional consecutive years.

(2) By February 15 each year, the Tax Commission shall publish the percentage of the contribution which may be claimed as a credit on the Tax Commission's website. The educational improvement grant organization shall notify contributors of that amount annually.

(g) **Annual report.** In order to maintain eligibility, an educational improvement grant organization shall annually report the following information to the Tax Commission, on forms prescribed by the Tax Commission, on or before September 1 of each year:

(1) *The name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,*

(2) *A description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,*

(3) *The names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,*

(4) *Where the organization collects information on a county-by-county basis, and*

(5) *The total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.*

(h) **Ninety percent (90%) requirement.** Effective January 1, 2014, a credit will not be allowed by the Tax Commission for contributions made to an eligible educational improvement grant organization if the organization's percentage of funds actually awarded is less than ninety percent (90%). In order to determine this amount, the total amount of funds actually awarded over the most recent twenty-four (24) months shall be divided by the total amount available to award over the most recent twenty-four (24) months.

(i) **When credits may be claimed.** Any tax credits which are earned by a taxpayer during the time period beginning on August 26, 2011 through December 31, 2012, may not be claimed for any taxable year beginning before January 1, 2013 and may not be used to file an amended tax return for any taxable year beginning before January 1, 2013.

(j) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used may be carried over, in order, to each of the three (3) subsequent taxable years. The credit is not transferable.

[OAR Docket #12-699; filed 5-23-12]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #12-698]

RULEMAKING ACTION:
PERMANENT final adoption
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Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-53 [AMENDED]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 5. Determination of Taxable Corporate Income
710:50-17-51 [AMENDED]
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Section 710:50-15-53 has been amended to reflect current Commission policy regarding the procedure to elect to forego the NOL carryback period and conform to recent statutory changes.
Sections 710:50-17-51 has been amended to conform to recent statutory changes.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-53. Oklahoma net operating loss for individual returns

(a) Oklahoma net operating losses shall be separately determined by reference to Section 172 of the Internal Revenue Code and will be calculated utilizing Oklahoma Form 511-NOL Schedule A for resident individuals and Form 511-NR-NOL Schedule A for nonresident and part-year individuals.

(b) An election may be made to forego the Net Operating Loss (NOL) carryback period. In order to waive the carryback period, a written statement of the election must be part of the timely filed Oklahoma loss year return.

(c) The years to which such losses may be carried shall be determined by reference to Section 172 of the Internal Revenue Code, as follows:

(1) ~~For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss carryback shall be for a period of three (3) years;~~

~~(2) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss carryback shall be for a period of two (2) years;~~

~~(3) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss carryback shall be for a period of one (1) year;~~

~~(4) For net operating losses incurred for tax years beginning after December 31, 1995, no loss carryback shall be allowed; and~~

~~(5)~~ For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2006~~2007, the loss carryback shall be for a period as allowed in the Internal Revenue Code~~.~~; and

~~(6) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss carryback shall be for a period of two (2) years.~~

(2) For net operating losses incurred for tax years beginning after December 31, 2007, and ending on or before December 31, 2008, the loss carryback period shall be for a period of two (2) years; and

(3) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(~~c~~d) Resident individuals will use Oklahoma Form 511-NOL Schedule B to compute the amount of the loss absorbed in each intervening year. Nonresident and part-year resident individuals will use Oklahoma Form 511-NR-NOL Schedule B to compute the amount of loss absorbed in each intervening year.

(~~d~~e) Taxpayers who incur a net operating loss from farming, allowed under IRC 172 (b)(G), in tax years beginning after December 31, 1999, will be allowed to carry that loss back, in accordance with the carryback provisions of the Internal Revenue Code. However, the amount of the farm net operating loss available for carryback is limited to the lesser of Sixty Thousand Dollars ($60,000) or the loss shown on Federal Schedule F of the Internal Revenue Service Form 1040, reduced by fifty percent (50%) of the income from all other sources, except those included on Federal Schedule F.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME

710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [**See:** 68 O.S. § 2358]

(1) **Taxes based on income.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

(i) State and Local Income Taxes,

(ii) Foreign Income Taxes, and

(iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [**See:** 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) ~~For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;~~

~~(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;~~

~~(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;~~

~~(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and~~

~~(V)~~ For net operating losses incurred for tax years beginning on or after January 1, 2001, and ending on or before December 31, ~~2006~~ 2007, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code~~.~~; and

~~(VI) For net operating losses incurred for tax years beginning on or after January 1, 2007, and before December 31, 2007 the loss **carryback** shall be for a period of two (2) years.~~

(II) For tax years beginning after December 31, 2007, and ending before January 1, 2009, the loss carryback period shall be for a period of two (2) years; and

(III) For tax years beginning after December 31, 2008, the loss carryback period shall be for a period as allowed by Section 172 of the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [**See:** 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [**See:** 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U. S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [**See:** 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [**See:** 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. **[See:** 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [**See:** 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [**See:** 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [**See:** 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [**See:** 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [**See:** 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the provisions of the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002*, the federal *Economic Stimulus Act of 2008* or the federal *American Recovery and Reinvestment Act of 2009*). Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

(22) **Add-back of applicable Section 179 expenses.** For tax years beginning on or after January 1, 2009 and ending on or before December 31, 2009, any amount in excess of One Hundred Seventy-five Thousand Dollars ($175,000.00) which has been deducted as a small business expense under Internal Revenue Code Section 179 as provided in the federal *American Recovery and Reinvestment Act of 2009* must be added back to Oklahoma taxable income.

[OAR Docket #12-698; filed 5-23-12]

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

[OAR Docket #12-700]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. ~~Waste~~Used Tire Recycling
710:95-5-1 [AMENDED]
710:95-5-2 [AMENDED]
710:95-5-3 [AMENDED]
710:95-5-8 [AMENDED]
710:95-5-9 [AMENDED]
710:95-5-10 [AMENDED]
710:95-5-11 [AMENDED]
710:95-5-12 [AMENDED]
710:95-5-19 [AMENDED]
Subchapter 17. Prepaid Wireless Fee
710:95-17-3 [AMENDED]
710:95-17-7 [AMENDED]
Subchapter 19. Business Activity Tax

710:95-19-6 [AMENDED]
710:95-19-7 [AMENDED]
Subchapter 21. Quality Events [NEW]
710:95-21-1 through 710:95-12-11 [NEW]

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Oklahoma Tax Commission; 27A O.S. § 2-11-401.6; 68 O.S §§ 203 and 1221

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ANALYSIS:
Subchapter 5 has been amended to conform to the provisions of House Bill 1939[2011] which renamed the Waste Tire Recycling Act the Used Tire Recycling Act, provided for a definition of used tires and increased the $1.00 recycling fee for all tires with rim diameters of seventeen and one half inches or less to $2.50. This Subchapter has also been amended to reflect Commission policy regarding the due date for remittance of the used tire recycling fee that falls on a weekend day, holiday or day that the Federal Reserve banks are closed.

Subchapter 17 has been amended to reflect Commission policy regarding the due date for remittance of the prepaid wireless fee that falls on a weekend day, holiday, or day that the Federal Reserve banks are closed and has also been amended to clarify the treatment for purposes of the prepaid wireless 911 fee of retail transactions of prepaid calling cards providing access only to long distance telephone services, and not the right to utilize mobile service or other non-telecommunications services.

Subchapter 19 has been amended to clarify policy regarding the $25 tax credit for the Business Activity Tax.

New Subchapter 21, and the new sections contained therein have been added to implement the provisions of SB 1284 [2010] which enacts the Oklahoma Quality Events Incentive Act.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. ~~WASTE~~USED TIRE RECYCLING

710:95-5-1. 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, enforcement, and collection of the levy enacted by the Oklahoma Legislature pursuant to the Oklahoma ~~Waste~~Used Tire Recycling Act (27A O.S. § 2-11-401 et seq.).

710:95-5-2. Definitions

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

"Commission" means the Oklahoma Tax Commission.

"DEQ" means the Oklahoma Department of Environmental Quality.

"ODH" means the Oklahoma Department of Health.

"Tire-derived fuel facility" or **"TDF facility"**means a facility that uses processed tires or whole ~~waste~~used tires for energy or fuel recovery.

"Used tire" means an unprocessed whole tire or tire part that can no longer be used for its original intended purpose but can be beneficially reused as approved by the DEQ. Any used tire collected in accordance with the requirements of the Oklahoma Used Tire Recycling Act is not considered to be discarded. A tire that can be used, reused or legally modified to be reused for its original intended purpose shall not be a used tire.

"~~Waste~~Used tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which ~~waste~~used tires are processed.

"~~Waste~~Used tire processing" means altering the form of whole ~~waste~~used tires by shredding, chipping, or other method approved by the department, except baling. [27A O.S.Supp.2005, §2-11-401.1]

710:95-5-3. ~~Waste~~Used tire recycling fee

(a) **Applicability of the fee.** The fee levied by the Oklahoma ~~Waste~~Used Tire Recycling Act is assessed in the following instances:

(1) All sales of tires for motor vehicles, whether used on or off road, 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 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~~$2.50 per tire, where the tire rim diameter is less than or equal to ~~seventeen~~ nineteen and one-half (~~17~~19 $\frac{1}{2}$") 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~~3) $1.00 per tire, for tires to be used on motorcycles, minibikes, motor-driven cycles, or motorized bicycles.

(~~5~~4) 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~~5) 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~~Used 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~~Used Tire Recycling Fee is not applicable to the sale of a used tire by a tire dealer on which the ~~waste~~used 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~~Used 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~~Used 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~~used tire recycling fee applies to the transactions and vehicles indicated in (1) through (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~~used tire recycling fee does not apply to the transactions and vehicles indicated in (1) through (11) of this subsection:

(1) Airplanes.

(2) Bicycles.

(3) Riding lawn mowers.

(4) Wheelbarrows.

(5) Push mowers.

(6) Forklifts.

(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 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.

(8) Tires sold for backhoe, grader, and other construction machinery.

(9) First registration in Oklahoma of vehicles registered under the International Registration Plan.

(10) All-terrain vehicles.

(11) Off-road motorcycles.

710:95-5-10. Computation

The fee is not part of the base price of the tire subject to sales tax, if the fee is shown separately from the price of the tire. Example:

Tire	$50.00
Sales Tax(6%)	3.00

	$53.00	(use applicable tax rate for your location)
~~Waste~~Used Tire Fee	1.00	
Total Due	$54.00	

710:95-5-11. Reporting and remitting

Tire sales must be reported and the fees remitted to the Oklahoma Tax Commission by the 20th of the month following the month in which the sales are made. If a due date of a used tire recycling report and remittance falls on Saturday, Sunday, a holiday, or a date when the Federal Reserve Banks are closed, such due date shall be considered to be the next business day.

710:95-5-12. Voluntary payments by persons who desire ~~waste~~used tires to be collected and transported

(a) The ~~Waste~~Used Tire Recycling Act, enacted to facilitate the collection, transportation, and processing of ~~waste~~used tires, is based upon the presumption that a transaction has occurred which has generated a payment into the ~~Waste~~Used Tire Indemnity Fund (Fund). In the case of transactions for which such payment did not occur, any person may make a voluntary payment into the Fund in order to allow the processing of ~~waste~~used tire carcasses. Examples of situations in which voluntary payments would be appropriate include:

(1) Persons wishing to have ~~waste~~used tire carcasses processed, but who are not engaged in the business of selling tires;

(2) Tire dealers who have been engaged in selling tires and who have collected and remitted the ~~waste~~used tire fees, as needed, on each transaction on which a fee was due, but who have accepted tires from Oklahoma residents for disposal or have otherwise come into possession of tire carcasses generated in Oklahoma, for which no fees have been paid into the ~~Waste~~Used Tire Indemnity Fund;

(3) Automotive dismantlers and parts recyclers who have tires on hand from purchases of automobiles made prior to January 1, 1996.

(b) Tires for which such voluntary payment is made shall be deemed fully eligible for collection and transport by any authorized ~~waste~~used tire facility.

(c) No payment into the Fund whatsoever is required for:

(1) Up to five tires for each Oklahoma-titled vehicle purchased since January 1, 1996, by an Automotive dismantler and parts recycler, provided that Department of Environmental Quality (DEQ) Rule 252:520-21-8 has been complied with;

(2) Tires collected and transported from landfills and tire dumps which have been identified by DEQ as such and which have been placed on a priority enforcement list; or

(3) Tires collected during community-wide clean-up days authorized by DEQ.

710:95-5-19. Compliance

Upon receipt of a determination from the DEQ that a tire dealer or motor license agent has demonstrated a flagrant or repeated disregard of Section 2-1-401.2 of Title 27A, the Tax Commission will commence proceedings to collect finally established ~~waste~~used tire fee liabilities in accordance with the recommendations of the DEQ. The Tax Commission will, in a timely manner, report the results of the proceedings to the DEQ.

SUBCHAPTER 17. PREPAID WIRELESS FEE

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. **"Prepaid wireless telecommunications service"** does not include traditional calling cards.

"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.

"Traditional calling card" means a calling card which provides access only to long distance telephone service by enabling the user to originate a call using an access number or authorization code and which is not intended for use exclusively on a cellular phone.

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, or a date when the Federal Reserve Banks are closed, such due date shall be considered to be the next business day.

SUBCHAPTER 19. BUSINESS ACTIVITY TAX

710:95-19-6. Tax credit

(a) For tax years, 2010 through 2012, ~~sole proprietors and farmers are allowed~~ a credit is allowed against the tax levied by 68 O.S. § 2355 in the amount of Twenty-five Dollars ($25.00) of the Business Activity Tax paid; provided, no credit is allowed for any amount of the tax paid pursuant to OAC 710:95-19-5(a)(1) . 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)~~The payment of the Business Activity Tax by any person doing business in this state, including limited liability companies, who is 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 or 54 O.S. § 500-210A. In no event shall the credit be refunded.

(c) Persons who are entitled to claim the credit against the amount due pursuant to the provision of 18 O.S. § 2055.2, or 54 O.S. § 500-210A, are not allowed the credit against the tax levied by 68 O.S. § 2355.

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 subtracting any ordinary trade or business expenses paid from one member of the combined group to another member of the combined group

SUBCHAPTER 21. QUALITY EVENTS

710:95-21-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedure Act, 75 O.S. §§ 250.1 et seq. and to facilitate the administration, allocation and payment of tax incentives pursuant to the Oklahoma Quality Event Incentives Act.

710:95-21-2. Definitions

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

"Certified sponsor" means an entity or organization authorized to promote and conduct a quality event, which is incurring expenses for the promotion of such event to be conducted within the corporate limits of an eligible municipality or an unincorporated area within a county.

"Commission" means the Oklahoma Tax Commission.

"Economic impact study" means a study of the geographic area designated by a host community pursuant to Section 710:95-21-4(b), which includes:

(A) A description and, if applicable, history of the quality event,

(B) Information regarding the site selection process for the quality event,

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event,

(D) An estimate of the total gross sales made by vendors within the designated area during any period of time during which no quality event activity occurs,

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event,

(F) The general economic impact likely to occur in the designated area as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event, and

(G) Any additional information the Oklahoma Tax Commission may require.

"Eligible local support amounts" means:

(A) Any payment made by a local government entity or transfer of monies from the general fund or transfer of tax revenues derived from a locally imposed tax to a certified sponsor for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event, or

(B) Any direct payment made by a certified sponsor to a for-profit or nonprofit entity, other than the host community, for the purpose of attracting, promoting, advertising, organizing, conducting or otherwise supporting a quality event.

"Host community" means any county, incorporated city or town, or any combination of counties, incorporated cities or towns of the state which are authorized by their respective governing bodies to host or assist in the presentation of a quality event.

"Incremental sales tax revenue" means, with respect to a new event, a comparison of the amount of additional state sales tax revenue, if any, in excess of the amount of state sales tax revenue collected within a quality event area during the same month of the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b); or, with respect to a recurring event, a comparison of the amount of additional sales tax revenue, if any, in excess of the calculated average amount of sales tax revenue collected in the quality event area during the preceding year for purposes of the economic impact study required by Section 710:95-21-4(b). For purposes of computing the calculated average amount of monthly sales tax revenue collected as required by this paragraph with respect to a recurring event, the Oklahoma Tax Commission shall average total sales tax revenue collected by month but shall exclude revenue collected during the same month or months in a prior year during which the recurring event was conducted and if the event does not occur during the months of November or December, shall also exclude revenue collected during the immediately preceding November and December. The calculated average amount of monthly sales tax revenue shall be used to determine whether a recurring event produces incremental sales tax revenues.

"New event" means a quality event which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held.

"Quality event" means a new event or a meeting of a nationally recognized organization or its members which is being located at a site chosen through a competitive site selection process in which at least one site not located in this state was considered.

"Quality event area" means a geographic area designated by a host community pursuant to Section 710:95-21-3(b)(1) determined to realize direct economic benefit from the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event; provided, the designated area shall never constitute an area greater than thirteen (13) miles from any property line of the primary property at which the quality event is located. The property line shall be based on the legal description or survey of a single location determined by a host community to be the primary property for a quality event area.

"Recurring event" means a quality event which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

"Revenue capture period" means a time period beginning no earlier than two (2) days prior to the quality event date or the first day upon which the quality event occurs and ending no later than two (2) days after the conclusion of the quality event date or the last day upon which quality event activities occur.

"State sales tax revenue" means the proceeds from the state sales tax levy imposed pursuant to Section 1354 of Title 68 of the Oklahoma Statutes upon taxable transactions occurring within the quality event area during the authorized revenue capture period.

"Vendors" means those persons or business entities making taxable sales of tangible personal property or services within a quality event area and, unless the context otherwise requires, shall have the same meaning as defined by Section 1352 of Title 68 of the Oklahoma Statutes.

710:95-21-3. Quality event requirements, limitations and eligibility

(a) **Designation of quality event.** For purposes of this Subchapter a host community can designate a quality event pursuant to the adoption by the governing body of the host community an ordinance or resolution which must contain designation of the following:

(1) A geographic area as a quality event area;

(2) A length of time of the revenue capture period; and

(3) The type of expenses eligible for payment through distribution of captured revenues to the host community including, but not limited to, advertising, facility rental, promotional materials and security.

(b) **Designation requirements.** The resolution or ordinance must be adopted at least one year prior to the first day of the quality event.

(c) **Limitations.** A host community may only designate one quality event during a single designated revenue capture period for purposes of the payments authorized by this Subchapter.

(d) **Eligible quality events.** Eligibility for qualify event status is available for events or meetings of a nationally recognized organization or its members which is being located at a site chosen through a competitive site selection process in which at least one site not located in this state was considered to include:

(1) **New events.** Quality events which did not occur within a period of twenty-four (24) months prior to the month during which a quality event is held; and

(2) **Recurring events.** Quality events which occurred at least once within the twenty-four (24) months prior to the month during which a quality event is held.

710:95-21-4. Quality event approval and application requirements

(a) **Application for approval.** Within ninety (90) days of the adoption date of the ordinance or resolution designating a quality event, the host community must submit a written request for recognition as a quality event to the Tax Policy Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194. The postmark date of the written request for recognition as a quality event is deemed to be its date of delivery.

(b) **Application requirements.** The application for recognition must include the following:

(1) **Ordinance or resolution.** A copy of the ordinance or resolution designating the quality event and an economic impact study.

(2) **Economic impact study.** The economic study must include the following information:

(A) A description of the quality event and, if applicable, a history of the quality event.

(B) Information regarding the site selection process for the quality event including the host community's bid documents submitted to the site selection organization soliciting the quality event, confirmation from the site selection organization that at least one state other than Oklahoma was considered for the quality event and the letter from the site selection organization designating Oklahoma as the quality event location.

(C) An estimate of the expenses anticipated to be incurred in connection with hosting the quality event which specifically categorizes the type of expenses, such as advertising, anticipated to be incurred along with the estimated costs associated therewith.

(D) An estimate of the total gross sales made by vendors within the designated area during any period of time during which no quality event activity occurs. This estimate must designate the month considered to estimate the total gross sales and the vendors and their sales tax permit numbers.

(E) A detailed estimate of the anticipated increase in sales tax revenue directly attributable to the quality event. This estimate must include a list of vendors and sales tax permit numbers within the designated quality event area the Tax Commission is to consider for purposes of incremental sales tax revenue payments. To be included on the list by the host community the vendor must have been making sales subject to the Sales Tax Code in the same month or months of the quality event revenue capture period in the preceding year.

(F) The general economic impact likely to occur in the designated area as a result of the preparation for, occurrence of and activity occurring in connection with the dissolution of, a quality event.

710:95-21-5. Tax Commission review and approval process

(a) **Approval process.** Within ninety (90) days from receipt of the host community's request for quality event recognition, the Commission must approve or disapprove, in whole or in part, the economic impact study. The Commission shall not approve any economic impact study for which the Oklahoma Department of Commerce has not recommended approval in accordance with subsection (c) of this Section.

(b) **Review and approval.** In order for the economic impact study to be approved, the Commission must determine whether the economic impact contains the elements required in Section 710:95-21-4(b)(2) and whether the information provided is validly documented and based on generally accepted economic and statistical standards used for purposes of similar studies.

(c) **Assistance of the Oklahoma Department of Commerce.** Upon receipt of an economic impact study, the Tax Policy Division of the Commission must forward same to the Commerce Department for review and recommendation as to whether the economic impact study should be approved or disapproved.

(d) **Order disapproving request.** An order of the Commission disapproving a host community's economic impact study is not an appealable order under Section 225 of Title 68 of the Oklahoma Statutes.

710:95-21-6. Determination of eligible local support amounts

(a) **Outline and required documentation.** Within thirty (30) days from the conclusion of the quality event the host community must submit to the Management Services Division of the Commission at 2501 N. Lincoln Blvd, Oklahoma City, Oklahoma 73194, an outline with supporting billing and payment information detailing the total amount of eligible local support amounts for purposes of determining the amount of incremental state sales tax revenue that may be paid to the host community in which a quality event occurred.

(b) **Payment verification.** The Commission must verify the amount of eligible local support amounts prior to making any payment to the host community.

710:95-21-7. Timeframe for determining the amount of the incremental state sales tax revenue

Within ninety (90) days after the conclusion of a quality event, the Commission must determine the amount of incremental state sales tax revenue remitted by vendors located within the designated quality event area.

710:95-21-8. Calculation of incremental state sales tax revenue

(a) **Calculation of incremental state sales tax revenue for new events.** To calculate new event incremental state sales tax revenue the Commission must compare the amount of state sales tax revenue remitted to the Commission by the vendors listed by the host community in the economic impact study within the quality event area during the month or months of

the quality event revenue capture period against the amount these vendor remitted during the same month or months of the quality event revenue capture period for the preceding year.

(b) **Calculation of incremental state sales tax revenue for recurring events.** To calculate recurring event incremental state sales tax revenue the Commission must do the following:

(1) Average total sales tax revenue collected by month excluding revenue collected during the same month or months in a prior year during which the recurring event was conducted and if the event does not occur during the months of November and December the revenue collected during the immediately preceding November and December must also be excluded.

(2) Compare the total sales tax revenue average referenced in paragraph (1) of this subsection with the amount of state sales tax revenue remitted during the month or months of the revenue capture period for the quality event to the Commission by the vendors within the quality event area which were listed by the host community in the economic impact study.

710:95-21-9. Manner of determining payment

The Commission must compare the total amount of eligible local support amounts with the total amount of incremental state sales tax revenues remitted by vendors located within the designated quality event area which were specified by the host community for purposes of computation of the incremental sales tax revenue. Payments made to the host community are governed by the following determinations:

(1) If a determination is made that the total amount of incremental state sales tax revenues is zero, no payment shall be made to a host community.

(2) If a determination is made that the total amount of incremental state sales tax revenues is greater than zero, but less than the total amount of eligible local support amounts, a payment shall be made subject to the limitation of the payment cap provided for in Section 710:95-21-10(b), to the host community of the quality event in an amount equal to the incremental state sales tax revenues.

(3) If a determination is made that the total amount of incremental state sales tax revenues is at least equal to the amount of eligible local support amounts, a payment shall be made, subject to the limitation of the payment cap provided in Section 710:95-21-10(b), to the host community in which the quality event occurs in an amount equal to, but not greater than, the eligible local support amounts.

710:95-21-10. Incentive payment limitations

(a) **Sources other than incremental state sales tax revenues.** No payment shall be made to any host community from a source other than the incremental state sales tax revenues, if any, derived from state sales tax remittances of vendors located within the applicable quality event area.

(b) **Payment threshold.** No payment shall be made to any host community in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) for a single quality event regardless of the amount of eligible local support paid by the host community.

(c) **Local sales tax revenues.** No proceeds from the levy of any sales tax imposed by a county or a municipality shall be affected by the provisions of this Subchapter and the proceeds from any such levy shall be collected and remitted as required by the Oklahoma Sales Tax Code. The distribution of the revenues shall be made in accordance with all applicable requirements of law with respect to such sales tax levies.

710:95-12-11. Incentive payments to host communities

After calculation of the incremental state sales tax revenue and verification of the eligible local support amounts the Commission shall issue a warrant subject to the limitation set forth in Section 710:95-21-10(b) equal to the amount of the incremental state sales tax revenue not to exceed the eligible local support amounts to the host community.

[OAR Docket #12-700; filed 5-23-12]

TITLE 720. STATE TEXTBOOK COMMITTEE
CHAPTER 10. TEXTBOOK SELECTION

[OAR Docket #12-633]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Bidding Procedures
720:10-3-3. Information necessary to complete bid [AMENDED]
720:10-3-5. Materials to be considered for adoption [AMENDED]
720:10-3-9. Local district sampling [AMENDED]
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CONTACT PERSON:
Paige Phillips, (405) 521-3456

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY1, 2012:

SUBCHAPTER 3. BIDDING PROCEDURES

720:10-3-3. Information necessary to complete bid

(a) The Secretary of the Committee shall instruct all publishers to indicate whether each item bid is submitted to be adopted and listed in the Official List and Textbook Requisition as a comprehensive program, ancillary item, or supplementary item.

(b) The Secretary of the Committee shall instruct all publishers to include in their bids, for the purpose of securing a selection or adoption, ~~the price F.O.B. the state depository~~, ~~the retail price at which each book may be sold to the consumer and~~ the price delivered to the ordering district. ~~All contracts with successful bidders shall include all three prices~~.

(c) The publisher shall stipulate in the contract that the price for which the textbook is to be furnished will be the lowest at which the same textbook will be sold or offered for sale for the purpose of securing a state or local selection or adoption elsewhere in the United States during the six (6) months prior to the date of execution of the contract; that the publisher will reduce the contract price of the textbook if the price of the same textbook is reduced below such contract price elsewhere in the United States, and will file with the Secretary of the Committee a sworn statement of such reduction made elsewhere.

(d) Publisher will establish and maintain, or operate jointly with other contractors, a suitable and convenient depository in the State of Oklahoma where a stock of the state adopted ~~books~~ instructional materials to supply all immediate demands will be kept. Publisher will maintain at its depository a sufficient supply of such textbooks or other physical products for individuals or boards of education desiring to purchase the same, and will sell any such book to any individual or board of education at the same price at which such ~~book~~instructionalmaterial is sold to the State of Oklahoma, plus cost of transportation to the individual or board of education purchasing the ~~book~~ instructional materials. If the Publisher fails to carry a sufficient stock of such books at its depository to take care of all immediate demands of the State of Oklahoma and others requesting the same, or to furnish such books as required by law or by the contract entered into by the Publisher and the State Textbook Committee, the State Board of Education may recover on the bond of the publisher for the full value of the books not furnished as required, by the contract. **[70 O.S., §16-115]** The contract between the publishers and the State Textbook Committee may also require the payment of an additional sum of $100.00 for each day such books are not furnished. In addition, the State Board of Education may terminate the Contract.

(e) All contracts shall include the important principles of the rules and regulations or agreements which bidders sign before or at the time of filing their bid.

(f) In addition to subsections (a) through (e) of this Section, the publisher is bound by all provisions of the State Textbook Law.

720:10-3-5. Materials to be considered for adoption

(a) One copy of each textbook and one sample of each learning package, kit, or other comprehensive review materials shall be filed with the office of the Secretary of the state Textbook Committee on or before the date specified in the schedule for the textbook adoption process. Textbooks must be in final form.

(b) One copy of each textbook and one sample of each learning package, kit, or other comprehensive review material and materials not listed as free shall be provided to each member of the State Textbook Committee and to each Congressional District Review Center. Failure to deliver samples by the date established by the State Textbook Committee calendar will result in a bid rejection.

(c) Samples of textbooks provided to the State Textbook Committee members and their advisors may be returned to the publishers, donated to a school district or donated to a college or university. Under no circumstances shall the samples become the personal property of the committee member or the advisor. Under no circumstances shall the samples be sold or donated for resale purposes.

(d) In order for a library or university to be designated by the State Textbook Committee as a Congressional District Review Center the library or university must agree to the following conditions:

(1) conveniently display materials immediately upon the receipt of materials and maintain the display until such date adopted by the State Textbook Committee;

(2) obtain approval of the State Textbook Committee before disposing or distributing the materials to any other person or entity; and remove materials from public access once they are adopted. Materials may remain accessible for on-site use to a limited audience (education professionals and pre-service teachers);

(3) sample materials may be returned to the publisher or may be disposed of with the approval of the State Textbook Committee

(e) Highly-visible, permanent labels stating, "sample not to be sold" must be attached to each item furnished as a sample to the State Textbook Committee, Congressional Review Centers and the office of the Secretary of the State Textbook Committee,

(f) Consumable materials must be clearly marked as consumable.

(g) Each publisher must warrant that all books adopted shall comply with the standards in the Manufacturing standards and Specifications for Textbooks approved by the National Advisory Commission on Textbook Standards.

(h) The State Textbook Committee favors regular editions, but special editions may be considered provided the differences between the two (2) editions are set forth with the bid.

(i) ~~Multimedia~~Digital content and related materials will be considered for adoption.

(j) Teacher materials will be adopted as separate items only at the kindergarten level and ESL.

(k) Instructional Materials shall be adopted in no more than one (1) core subject cycle.

(l) ~~A hardbound copy and a softbound copy of the same text are considered to be the same book and when bid together fill one (1) position~~.

(m) A book which has been bid and rejected by the State Textbook Committee cannot be bid again for the subject contract cycle ~~unless allowed by law.~~

(n) ~~Instructional computer software~~Technology components of instructional materials, including, but not limited to applications using computer assisted instruction, ~~interactive videodisc, other computer courseware, and magnetic media~~Web 2.0 Tools, Saas (Software as a Service) and other Cloud-based technologies, shall include comprehensive teacher materials listing special requirements for the respective subject or course along with

(1) instructions on how to use the ~~instructional computer software~~technology components;

(2) an inventory of the components of the ~~instructional computer software system~~program;

(3) specifications for the hardware necessary to operate the system;

(4) on-demand technical support ~~via at least a 15 hour toll-free telephone line.~~

(o) Specifications for the hardware necessary to operate the instructional computer software system must be identified. If the hardware and equipment essential for review of the materials bid in any category is not available, it shall be supplied to the State Textbook Committee, Congressional District Review Centers, and the State Department of Education for the duration of the review process.

(p) Publishers may not pilot programs to be bid for adoption without explicit written permission from the district superintendent and site administrator. Pilots must be completed no later than the date of the call for bids one adoption cycle year prior to the opening and consideration of bids in that subject area. Violation of this rule will result in immediate removal from the state textbook list.

720:10-3-9. Local district sampling

In accordance with Title 70, Section 16-111.B, upon written request by the district textbook coordinator, publishers of a textbook selected for adoption by the State Textbook Committee must furnish at least one examination copy of the ~~textbook~~instructional materials ~~and~~ including the teacher edition ~~of the textbook~~, if one is published, and a copy of software or online access for purposes of complete demonstration and review, if available, to each requesting district. All examination copies not adopted at the local level must be returned. Publishers are prohibited from providing examination copies of textbooks instructional materials unless requested in writing by the district textbook coordinator. Failure to do so may jeopardize the textbook contract.

[OAR Docket #12-633; filed 5-15-12]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #12-647]

RULEMAKING ACTION:
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Subchapter 3. Transportation Commission
730:1-3-4. [AMENDED]
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Oklahoma Department of Transportation; 69 O.S. §§ 101, 301, 303, 304, 306, 4002, 4006 and 4007
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The proposed rule refers to the comprehensive, long range, multi-modal transportation plan to serve as a framework for the development of the Eight Year Construction Work Plan. It strikes the reference of the Five Year Construction Program. What is contained in this proposed rule revises existing Department rules.
CONTACT PERSON:
Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 3. TRANSPORTATION COMMISSION

730:1-3-4. Comprehensive long range transportation plan

(a) The Commission shall develop, maintain, and publish a comprehensive multi modal long range transportation plan for the State of Oklahoma, develop measurable goals and objectives designed to carry out such a plan, report progress toward

achieving those goals and objectives as part of its statutorily required reports, where authorized by statute apply for, accept, receive, and administer federal funds available for transportation, and participate with local governments in the planning and development of local transportation activities which are consistent with the goals and objectives of the State long range plan for transportation.

(b) The comprehensive long range multi modal transportation plan must provide for the safe, efficient and effective movement of people and goods on surface, water and air transportation systems. The long range plan should support and enhance the State and local governments' initiatives for economic development, promote protection and enhancement of the environment, energy conservation and improvement of the quality of life.

(c) The long range multi modal plan should promote the preservation of existing transportation systems.

(d) The multi modal long range transportation plan should serve as the framework for ~~developing the Statewide Five Year Construction Program~~the development of the Eight Year Construction Work Plan from which the Statewide Transportation Improvement Plan, which depicts all the federally funded transportation projects, is derived.

[OAR Docket #12-647; filed 5-18-12]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 10. DEPARTMENT PROGRAMS

[OAR Docket #12-648]

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Subchapter 1. Construction Program
730:10-1-1. [AMENDED]
730:10-1-2. [AMENDED]
730:10-1-3. [AMENDED]
730:10-1-4. [AMENDED]
730:10-1-5. [REVOKED]
730:10-1-6. [REVOKED]
730:10-1-7. [AMENDED]
730:10-1-8. [REVOKED]
730:10-1-9. [AMENDED]
730:10-1-11. [AMENDED]
Subchapter 15. Project Development Procedures
730:10-15-1. [AMENDED]
730:10-15-2. [AMENDED]
Appendix A. Ideal Scoping Process Within Current Structure [REVOKED]
Appendix B. Eight Year Construction Work Plan Management Process [NEW]
AUTHORITY:
Oklahoma Department of Transportation; 23 U.S.C 101 et seq.; 69 O.S. §§ 101, 301, 303, 304, 312, 317, 403 through 412, 502, 636.3, 656, 659, 661, 689, 701, 1502 and 4002
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Gubernatorial Approval:
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Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2012.
Final Adoption:
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SUPERSEDED EMERGENCY ACTIONS:
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N/A
ANALYSIS:
The proposed rule establishes a blueprint for the development and delivery of statewide transportation projects in accordance with the Department's Eight Year Construction Work Plan. The rule puts forth budgetary methodology in order to establish a baseline fiscal year projection for each of the eight Field Divisions. The rule also establishes a methodology for the balancing and management process of the Eight Year Construction Work Plan and revises the operational flowchart.
CONTACT PERSON:
Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. CONSTRUCTION PROGRAM

730:10-1-1. Purpose

It is the purpose of this subchapter to outline ~~Oklahoma's long range transportation program priorities for~~ the Construction Program for various transportation projects within the State. This includes ~~many diverse areas of construction and includes aspects of the various modes of transportation which fall within the jurisdiction of the Commission and Department~~the adoption by Commission, the establishment of budgetary projections, defining the roles and responsibilities during the balancing and management processes of the Eight Year Construction Work.

730:10-1-2. Adoption of ~~long range program~~the Eight Year Construction Work Plan

The Commission shall annually adopt ~~a long range transportation improvement program~~an Eight Year Construction Work Plan for the systematic development of transportation facilities within the State. ~~The program period will be at least five (5) years and shall contain an estimated cost for each project which includes annualized budgeting factors to account for inflation and changes in project scope. As work is let to contract, additional plan shall be added to assure that the program shall encompass not less than five (5) years.~~The plan shall contain the general location, contemplated work type,

scheduled federal fiscal year and an estimated program cost for each project identified in the subsequent eight years.

730:10-1-3. ~~Engineering needs study~~Eight Year Construction Work Plan budgetary projections

~~All projects included in the long range highway transportation program shall be based on the biennial Engineering Needs Study developed by the Department. The data contained in this study shall be used as the basis for the allocation of available state and federal highway funds among the Commission Districts. Each district shall receive not less than six percent (6%) of the state highway funds appropriated to the Highway Construction and Maintenance Fund and which are budgeted and expended for matching federal highway funds or construction of state aid projects. The Commission will program projects based on the latest Needs Study developed by the Department.~~

(a) The budgetary projections utilized for the basis of the fiscally responsible and financially balanced Eight Year Construction Work Plan shall be established through a systematic evaluation of the department's anticipated state-aid and federal-aid revenues and expenditures. Projections shall be performed for the subsequent eight federal fiscal years with the federal fiscal year defined as beginning October 1st and ending on September 30th. The budgetary projections shall only address funding that has been historically and/or categorically committed to state, federal and interstate highway system improvements. The budgetary projections by Commission District shall be adjusted accordingly to the reflect debt service requirements associated with any federal-aid bond program.

(b) The following formula, that considers common demographic, physical and historical criteria and yields a divisional percentage that renders an equitable distribution of the available funds, shall be applied to the statewide projections to establish a baseline fiscal year projection for each Field Division but no Commission District shall receive less than six percent (6%) of the statewide projection: (% of Population + % of Mainline Highway System Miles + % of Previous 15 Year Const. Program) divided by 3.

(c) The baseline fiscal year projection for each Field Division shall be adjusted to ensure the funds are equitably distributed by the formula. The adjustment shall consider the actual project expenditures statewide as compared to the actual project expenditures per Field Division. To eliminate drastic fluctuations in any one baseline fiscal year projection, over or under expenditures will be distributed over a four year time frame.

730:10-1-4. ~~Prioritization of Needs~~Eight Year Construction Work Plan balancing process

(a) Project priorities among the individual Commission Districts shall be established in the context of the relative priorities for the systematic improvement of the highway system on a statewide basis. ~~The Department, in coordination with the Commissioner representing each district, shall determine the top twenty five (25) projects in each district. These projects shall be prioritized and take precedence for the allocation of funding. While the needs data for each of the eight districts shall be utilized as the basis for programming in the individual districts, the Commission shall act as a whole when approving the statewide construction program and shall make every effort to avoid provincialism in its considerations. Once established, the priorities must remain firm for the Department to effectively carry out the construction program established by the Commission.~~

(b) The development of Eight Year Construction Work Plan shall begin with the Field Division Engineers and will be guided by their knowledge of the transportation needs and priorities in their respective divisions. The Field Division Engineers and their staff shall work to maintain an understanding of the condition of the roads and bridges in their areas of responsibility. The general transportation system data and characteristics are considered to be fundamental considerations:

(1) roadway condition
(2) bridge condition
(3) geometrics (vertical and horizontal alignment)
(4) average annual daily traffic (AADT)
(5) percentage of truck traffic
(6) accident history
(7) local, regional and national traffic patterns
(8) capacity.

(c) This information shall be coupled with the careful consideration of the Field Division's condition and capacity assessments of the highway network and the associated critical needs, as well as, the anticipated improvement budgets and further communication with the Division's Transportation Commissioner.

(d) The Department is responsible for coordinating the State's transportation planning efforts with those of Oklahoma's Metropolitan Planning Organizations, substate planning districts and consulting with the tribal governments and local officials with responsibilities for transportation. The development of the Long Range Plan and the Statewide Transportation Improvement Plan as derived from the first four years of the Eight Year Construction Work Plan, Corridor Studies, as well as early project development all include opportunities for public participation and review. The results of this public involvement, input from ongoing coordination and consultation, and the planning documents shall be provided to the Field Division Engineers for their consideration during the development of the Eight Year Construction Work Plan.

(e) **Project Schedules.** The Department shall work to set realistic project delivery schedules, taking into account many variables, to maintain the integrity of the Eight Year Work Plan.

(f) **Additional considerations.**

(1) The final divisional projections and projects identified in the Eight Year Construction Work Plan shall be adjusted within a given year to accommodate variances to the benchmark amount resulting from the annual State and Federal appropriations process and the inherent need to maintain a balance between available funds and the divisional funding commitments.

(2) The Department may request revisions to the Eight Year Construction Work Plan to establish, cancel or revise a project. The justification for the change shall be documented and approved.

(3) Balancing the Eight Year Construction Work Plan within these guidelines shall be determined an equitable representation to the satisfaction of the Department and the Transportation Commission.

730:10-1-5. Department recommendations [REVOKED]

~~The consideration of individual projects for inclusion in the long-range highway construction program and those to be added or deleted after the program has been established shall be based on recommendations by the Transportation Department's Director and the Commissioner whose district encompasses the project. Recommendations by the Department shall be consistent with the needs data and the availability of funds. When considering recommendations for projects to be added or deleted from the construction program, the Commission shall make such final decisions on the basis of statewide objectives.~~

730:10-1-6. Request for expenditures off the highway system [REVOKED]

~~Requests for the expenditure of state funds or resources for projects off the designated state highway system shall be directed to the Commissioner in whose district the project is to be constructed. Where the request appears to be justified, the Commissioner will pass the information along to the Department so that an evaluation of the project may be made and the Department shall then recommend to the Commission whether or not the project is eligible for inclusion in an applicable program under the procedures governing that program.~~

730:10-1-7. Cities and towns

(a) All city or county funds which, by agreement with the Department are to be used to pay or participate in construction contract cost items shall be deposited with the Department prior to advertising the project for bids. If the city or county by agreement with the Department is to perform a portion or all of the construction work as their share of the project costs, they will not be required to deposit funds with the Department prior to advertising for bids. Where it is impossible to determine final cost of the project until construction is completed, the deposit shall be based on the engineer's quantity estimates.

(b) On construction projects which require a detour within the limits of cities and towns, the Department shall secure an agreement from the governing body of the city or town involved approving the location of the detour and committing the city or town to the maintenance of the detour during construction, and a hold-harmless clause for any resulting damage to its streets used as a detour.

(c) The Department will not participate in costs of construction for the improvement of streets in cities or towns which are not on the state highway system except as authorized by the Commission and as provided by special agreement between the city or town and the Department.

(d) Where it is necessary to remove existing driveways and sidewalks within the limits of cities and towns, they shall be replaced as a part of the construction project and in conformance with the requirements of the Americans with Disabilities Act.

~~(e) No new sidewalks abutting private property shall be built except those deemed necessary and appropriate by a pedestrian study by the city or town involved and no new driveways shall be constructed beyond a point two and one half (2 1/2') feet back of the curb line.~~

730:10-1-8. Estimate of monies; annual work program [REVOKED]

~~The program shall include an estimate of all monies expected to become available to the Department during the program period and a tabulation, by years, of the work planned to be performed during the program period. Prior to the end of each fiscal year, the Commission shall select and designate from its adopted five-year program a specific plan of improvements to be accomplished during the next fiscal year. This annual work program shall list, identify, and locate in each Commission District definite projects, their estimated cost, method of financing and type of work, and shall include a reasonable year's work within the funds estimated to be available. The project cost estimates shall include factors for inflation and changes in project scope. The Director shall provide an allocation of funds for contingencies along with the annual work program. The annual work program shall be final and followed by the Commission in the next year; except that deviations may be made in case of disaster or other unforeseen necessities. In no instance will the total work programmed exceed the funds available during the year.~~

730:10-1-9. ~~Applicability of law and rules; "non-chargeable" program items~~Applicability of law and rules

~~Preparation of the construction program shall incorporate the following principles:~~

~~(1) Requirements of the Legislature, U.S. Government Agencies, other State Agencies, and Commission Rules shall govern as applicable.~~

~~(2) Funds required for "Non-chargeable" program items shall be deducted from the total funds for construction prior to computation of funds available for programming based on relative Commission District needs. "Non-chargeable" program items shall include turnpike connections and reservoir relocations only when the turnpike connection or relocation does not replace an inadequate facility.~~

Preparation of the Eight Year Construction Work Plan shall incorporate the requirements of the U.S. Government Agencies, the State Legislature, other State Agencies, and Commission Rules shall govern as applicable.

730:10-1-11. Letting lists

Monthly letting lists~~, based on the adopted program,~~ shall be prepared by the Department and submitted for Commission approval. Monthly letting lists shall include pertinent information including project description, type of improvement, estimated construction cost, local matching funds, or other information as the Department or the Commission may deem necessary.

SUBCHAPTER 15. PROJECT DEVELOPMENT PROCEDURES

730:10-15-1. Purpose

~~The purpose of this Subchapter~~It is the purpose of this subchapter~~is to develop and implement a procedure for the orderly and timely develop a transportation project from proposal to its completion~~to outline the project development process for projects identified in the Eight Year Construction Work Plan.~~This procedure will identify the work to be done. Modifications to the procedure will not be allowed without documentation establishing the need for modification to timely complete the project.~~This includes using project management methodologies throughout the project development process.

730:10-15-2. ~~Project scoping and development system~~Project development process

~~(a) The Department shall develop and implement a multidisciplinary procedure for project development from the inception of the project through post-construction analysis. The goal of this procedure, to be called the Project Scoping and Development System, shall be to institute an orderly and timely project development sequence with clearly defined areas of responsibility within the Department.~~

~~(b) The procedure implemented by the Department for projects to be scoped shall generally provide for the following phases of project development:~~

~~(1) The scoping phase which shall include project initiation, scoping team selection, preliminary cost estimates, definition of final project limits and scope, identification of environmental issues pertinent to the project, and opportunities for Senior Staff and Commission concurrence. Information used to generate preliminary cost estimates in this phase would come from a historical database and would include allowances for inflation costs and other unknown factors (see attached flowchart - Appendix A.).~~

~~(2) The programming phase which shall include project cost, funding type and priority analysis for Commission approval.~~

~~(3) The pre-design phase which shall include the preliminary functional design, environmental clearance, and refinement of the cost estimate.~~

~~(4) The design phase which shall include those steps necessary to validate the final scope of the project, acquire necessary right-of-way, provide for utility relocation, refine the cost estimate if necessary, and complete final design plans.~~

~~(5) The contracting phase which shall include project approval and authorization by the Federal Highway Administration for federal aid project and advertisement and awarding of construction contracts.~~

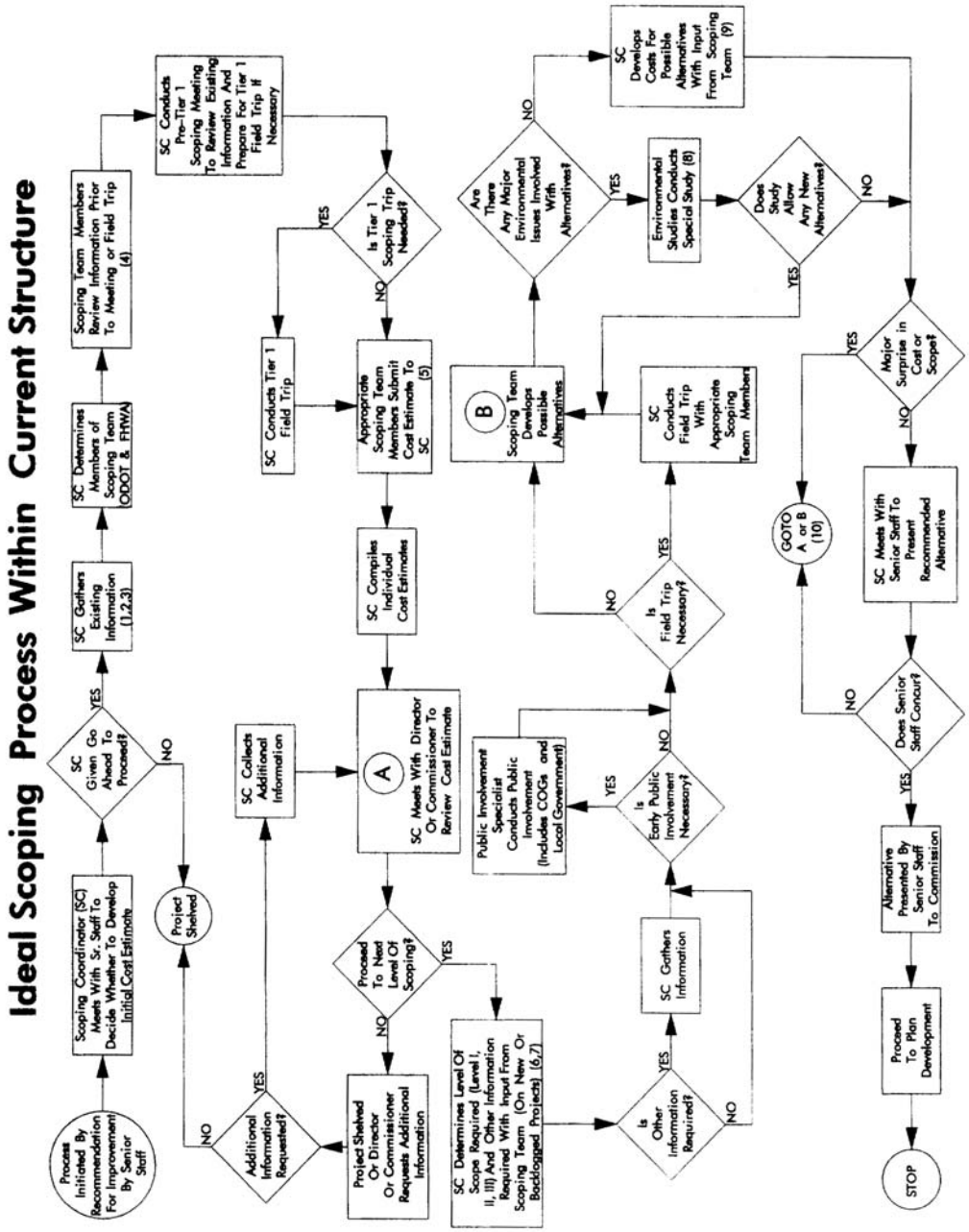
~~(6) The construction phase which shall include project construction and post-construction design and maintenance evaluations.~~

~~(c) The Department shall implement this procedure on a trial basis and periodically report to the Commission concerning its progress. Once fully implemented the Department shall periodically review this procedure to incorporate needed changes in order to insure the most efficient and effective development of transportation projects~~

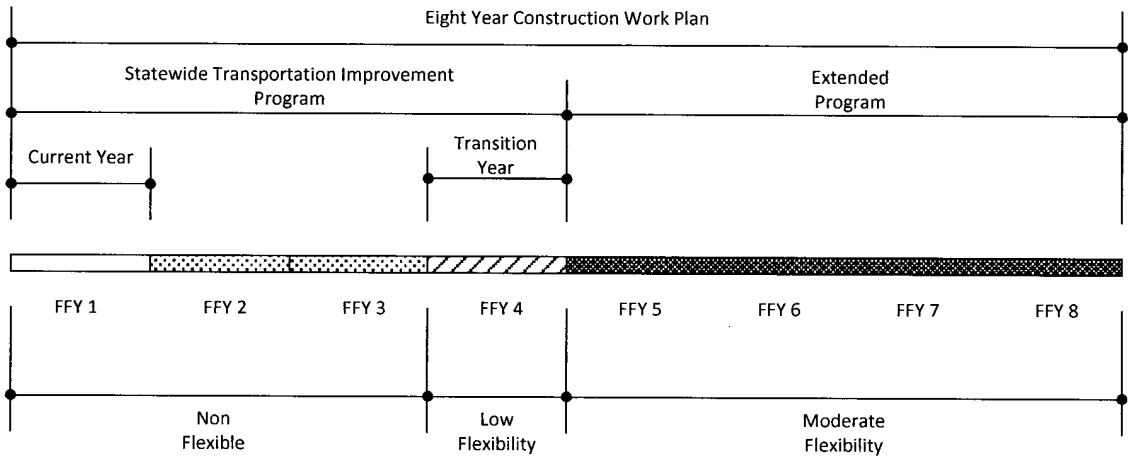
(a) The Department shall establish and maintain meaningful project schedules, establish accountability for project components, manage the construction program and measure performance. Since it is not possible to create a single project development process or schedule that will prove effective for every project every time, the Department shall establish a milestone based project schedule for each project identified in the Eight Year Construction Work Plan.

(b) As more detailed information becomes available during the course of project development, the Department shall facilitate necessary modifications to the scope, schedule and/or budgets of approved Eight Year Construction Work Plan projects through a formal revision process.

APPENDIX A. IDEAL SCOPING PROCESS WITHIN CURRENT STRUCTURE [REVOKED]



APPENDIX B. EIGHT YEAR CONSTRUCTION WORK PLAN MANAGEMENT PROCESS [NEW]



- Projects are "Fixed"
- Only modified through formal Program Revision Process
- Must Remain Balanced
- Evaluated yearly (July-August) to prepare for inclusion of Extended Program

- Potential projects to be considered for "Fixed" current program
- Refined project Scope/ Schedule/Budget
- Prioritized by Year
- May set minimum criteria for inclusion
- Must Remain Balanced
- Evaluated yearly (July-August) to prepare for inclusion of Extended Program

- Varying levels of Project Development
- Flexible Scope/Schedule/Budget
- Prioritized by Year
- Must Remain Balanced
- Any project can be advanced for consideration in the Transition Year
- Evaluated yearly (July-August) to prepare for inclusion of Unscheduled Projects

[OAR Docket #12-648; filed 5-18-12]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 15. HIGHWAY PLANNING

[OAR Docket #12-732]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Process [NEW]
730:15-1-9. Dedication and commendations[REVOKED]
Subchapter 3. Highway and Bridge Signage
730:15-3-1.Commission dedications and commendations [NEW]
730:15-3-2. Transfer costs of memorial signs [NEW]
AUTHORITY:
Oklahoma Department of Transportation; 74 O.S. § 3117; 69 O.S. §§ 101, 301, 303, 501, 504, 1600 and 4002; HB1666, 2011 O.S.L. c.8 § 1.
DATES:
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January 3, 2012 through February 3, 2012
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February 10, 2012
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March 5, 2012
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March 5, 2012
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March 5, 2012
Gubernatorial Approval:
April 13, 2012
Legislative Approval:
Failure of the Legislature to disapprove Sections 730:15-1-9 and 730:15-3-1 resulted in approval on May 2, 2012.
Section 730:15-3-2 was approved May 24, 2012 by House Joint Resolution 1116.
Final Adoption:
May 2, 2012 (730:15-1-9; 730:15-3-1)
May 24, 2012 (730:15-3-2)
Effective:
June 25, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule is needed in order to codify the legislatively directed procedure to assess and collect the cost of memorial signage to honor individuals who were not members of the US Armed Forces killed in action and to notify interested parties of the associated costs involved for the installation of said signs.
CONTACT PERSON:
Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 1. PROCESS

730:15-1-9. Dedications and commendations [REVOKED]

~~(a) Highways, bridges, and other facilities which are part of the state highway system may be considered for dedication in honor of individuals deserving of commendation for their active involvement in the project or for outstanding service to the nation, this state, or their community. Persons proposed to be so honored shall have been deceased not less than five years prior to consideration. Proposals for the dedication of state highway facilities should specifically state the accomplishments upon which the proposal is based.~~

~~(b) Elected governmental bodies may, by formally adopted resolution, propose the naming of such facilities to the Commission.~~

~~(c) No facility or group of related facilities shall be considered for naming in honor of more than one individual or entity, once named. Except in the most unusual circumstances, the Commission shall not consider changing the name of the facility, nor shall the Commission consider changing or designating additional names to the current named facility or city street which is also part of the state highway system.~~

AGENCY NOTE: *The text in this section can be found within the following sections: 730:15-3-1 and 730:15-3-2.*

SUBCHAPTER 3. HIGHWAY AND BRIDGE SIGNAGE

730:15-3-1. Commission dedications and commendations

(a) Highways, bridges, and other facilities which are part of the state highway system may be considered by the Transportation Commission for dedication in honor of individuals deserving of commendation for their active involvement in the project or for outstanding service to the nation, this state, or their community. Persons proposed to be so honored shall have been deceased not less than five years prior to consideration. Proposals for the dedication of state highway facilities should specifically state the accomplishments upon which the proposal is based.

(b) No facility or group of related facilities shall be considered for naming in honor of more than one individual or entity, once named. Except in the most unusual circumstances, the Commission shall not consider changing the name of the facility, nor shall the Commission consider changing or designating additional names to the current named facility or city street which is also part of the state highway system.

730:15-3-2. Transfer costs of memorial signs

(a) Elected governmental bodies may, by formally adopted resolution or legislative Act, propose the naming of highways and bridges on the state highway system to the Transportation Commission.

(b) In accordance with 69 O.S. § 1600, the costs associated with the signage related to the naming of highways and bridges on the state highway system shall be paid by the group or individual sponsoring or requesting the sign. Such costs shall not apply to the naming of highways and bridges on the state highway system designed to honor members of the United States Armed Forces who were killed in action, as determined by the United States Department of Defense.

(c) The procedure to assess and collect the cost of the erection of the sign, as well as the potential replacement or reconstruction of the sign, upon approval by the Transportation Commission is as follows:

(1) Each memorial sign is produced using computer aided drafting personnel to determine the size of the memorial sign using standard lettering rules.

(2) Pricing of the sign, itself, is based on the square footage of the size of the produced sign.
(3) Additional costs associated with the erection of the memorial sign include the price of sign posts, materials needed to secure the sign in the ground at its location, and labor - as determined by the respective Division where the sign is to be erected.

[OAR Docket #12-732; filed 5-25-12]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 30. HIGHWAY DESIGN

[OAR Docket #12-649]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Consulting Engineer Services
730:30-5-2. [AMENDED]
AUTHORITY:
Oklahoma Department of Transportation; 23 U.S.C. 101; 61 O.S. §§ 60 et seq.; 69 O.S. §§ 101, 301, 303, 701, 1401 and 4006
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Comment Period:
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March 13, 2012
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April 13, 2012
Legislative Approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 10, 2012.
Final Adoption:
May 10, 2012
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June 25, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule amends language to clarify the actual local government unit involved in process to utilize federal funds for professional services on a non-highway project. The rule allows for the selection and employment of professional service providers by local unit of government and subject to the jurisdiction thereof.
CONTACT PERSON:
Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. CONSULTING ENGINEERING SERVICES

730:30-5-2. City and county consultant contracts
~~(a)~~ Where the ~~local unit of government has submitted a formal resolution proposing~~Local Public Agency (LPA) proposes the use of federal funds for ~~engineering or planning work~~professional services on a non-highway project (local city street or county road) and where there are local matching funds but no state funds involved in the project, the local unit of government having jurisdiction over the project, shall have the right to select and employ the ~~engineering or planning consultant~~professional service provider subject to compliance with State statutes, federal regulations, Department procedures and Department approval.
~~(b) The Department will furnish to the local unit of government, upon request, a list of consultants prequalified with the Department of Central Services. The city or county may add to the list of consultants prequalified by the Department of Central Services the names of other registered engineers who have previously performed acceptable work on local city and county street or road projects. The city or county may then select from the list at least three consultants to interview, with the final selection being based on results of the interviews.~~

[OAR Docket #12-649; filed 5-18-12]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 35. MAINTENANCE AND CONTROL OF STATE HIGHWAY SYSTEM

[OAR Docket #12-733]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Highway Advertising Control
730:35-5-3. Definitions [AMENDED]
730:35-5-18. Vegetation management [NEW]
AUTHORITY:
Oklahoma Department of Transportation; 23 U.S.C 131; 23 C.F.R. 750 et seq.; 74 O.S. § 3117; 69 O.S. §§ 101, 301, 304, 312, 1271, 1275, 1277 and 1286; SB339, 2011 O.S.L. c.346 § 1.
DATES:
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Public Hearing:
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Gubernatorial Approval:
April 13, 2012
Legislative Approval:
Approved May 24, 2012 by House Joint Resolution 1116
Final Adoption:
May 24, 2012

Effective:
June 25, 2012
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
This rule is needed in order to codify the legislatively directed administration and processes for vegetation management activities and to notify interested parties of the $200 fee for the performance of such activity.
CONTACT PERSON:
Brian Bigbie, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma 73102, 405-522-6002 or bbigbie@odot.org

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2012:

SUBCHAPTER 5. HIGHWAY ADVERTISING CONTROL

730:35-5-3. Definitions

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

"Abandoned sign" means a registered sign in need of substantial repair, or which is overgrown by trees or other vegetation not on the highway right-of-way or is otherwise no longer being utilized as an outdoor advertising device, for a period of one (1) year, shall be considered "abandoned" and any nonconforming or grandfather status granted by the Highway Advertising Control Act shall be terminated. Leasing information shall not be considered advertising content for purposes of this definition.

"Adjacent area" or "control area" within urban areas means the area which is adjacent to and within six hundred sixty (660) feet of the nearest edge of the right-of-way on any Interstate or the National Highway System. The six hundred sixty foot (660) distance shall be measured horizontally along a line perpendicular to, or ninety degrees (90°) to the centerline of the highway. Outside of urban areas, adjacent area or control area means the area which is visible from the main traveled way on any interstate or the National Highway System and has the purpose of being read. All spacing considerations are determined by whether or not they exist within the adjacent or control area. Signs located outside the "control area" will not be registered.

"Adjacent Property Owners" means any person, firm or corporation owning property which is located adjacent to a "Clearance Area," as defined in this subsection. Applicant shall submit written consent from any such property owner when making application for a clearance permit.

"Advertisement" means any writing, printing, picture, painting, display, emblem, drawing, sign or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, real or personal property, business, services, entertainment or amusement manufactured, produced, bought, sold, conducted, furnished, or dealt in by any person; the term shall also include any part of an advertisement recognizable as such, whether a permanent or portable installation, but shall not include surface markers showing the location or route of underground utility facilities or pipelines or public telephone coin stations installed for emergency use; nor shall same include temporary election candidate campaign signs or voters' referendum signs, if erected not more than forty-five (45) days prior to an election and removed within seven (7) days following the election or within seven (7) days following the final election if more than one is required to settle the advertised candidate election or non-election, or referendum issue.

"Agreement" means the agreement between the Director of the Oklahoma Department of Transportation and the Secretary of the Transportation of the United States, regarding the enforcement of the Highway Beautification Act of 1965.

"Business area" means any part of an adjacent (control) area which is zoned for business, commercial or industrial activities under the authority of any law of this state, or not zoned, but which constitutes an unzoned commercial or industrial area as herein defined.

"Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a non-divided highway.

"Commercial or industrial area" means any part of a control area which is within six hundred sixty (660) feet of the nearest edge of the right of way and is:

(A) Zoned for industrial or commercial activities under the authority of any state zoning law, or city or county zoning ordinance of this State. Any commercial or industrial area created or established by any zoning authority must actually be capable of supporting commercial or industrial activities. A zoning action which is not a part of a comprehensive zoning plan and is created primarily to allow outdoor advertising structures does not constitute valid zoning for outdoor advertising control purposes.

(B) Not zoned, but which constitutes an unzoned commercial or industrial area as herein defined.

"Clearance Area" means the area of state right-of-way adjacent to property upon which a legal outdoor advertising sign is located, of which said sign owner wishes to remove vegetation. This area shall not exceed 800 feet in length, from any face of the sign, along the highway. This distance shall be determined by measuring horizontally along the highway from a line perpendicular from the support pole, nearest the highway, of the sign to the centerline of the highway.

"Commercial and industrial activities" means those activities, clearly visible and recognized as a commercial or industrial activity from the main traveled way, generally recognized as commercial or industrial by zoning authorities in the state.

"Comprehensive zoning" means a complete approach to land use within the jurisdiction of a zoning authority. For example, the mere placing of the label "zoned commercial or

industrial" on land does not constitute comprehensive zoning, but rather, the establishment of a complete set of regulations to govern the land use within the entire jurisdiction of the zoning authority.

"Control of access" means the Department shall not issue a permit for any sign which cannot be erected or maintained from private property without violating control of access boundaries.

"Customary maintenance" means maintenance that shall only include, change of message, replacing electrical wiring and bulbs, painting of the face and structure, clearing vegetation (not on right-of-way), reinforcing the structure with banding or nails, and repairing the apron or catwalks. Additional maintenance activities may be approved upon written request to the Department. An increase in dimension, any change in location, increase in height, change in location in lighting, or the addition of lighting does not constitute customary maintenance. An increase, change, addition or any maintenance which is not listed above, shall terminate any non-conforming or grandfather status granted by the Act and the sign shall be considered illegal, thus a public nuisance subject to summary abatement and removal without compensation.

"Damage" means injury or harm as a result of wear and tear, storms, or other natural causes including, but not limited to, insect damage. If such damage occurs, the owner of the damaged sign shall notify the Department by letter within thirty (30) days of the occurrence, giving the sign's registration number, date damage occurred, whether or not the sign will be repaired, an itemized list of repairs, and a picture of the damaged structure. Failure to comply with any part of the above requirements before repairing a damaged sign shall result in forfeiture of any nonconforming or grandfather status granted by the 1972 Highway Advertising Control Act. After receiving authorization and repairs have been completed, the owner shall send a picture of the repaired structure to the Department.

"Department" means the Oklahoma Department of Transportation.

"Destroyed" means that a sign shall be considered destroyed when damaged, from any cause except a criminal or tortious act, exceeds fifty percent (50%) of the sign structure.

"Directional signs" means signs giving directional information about goods and services of interest to the traveling public. Such signs shall be limited to those pertaining to rest stops, camping grounds, food services, fuel and automotive services, and lodging.

"Director" means the Director of the Department of Transportation or his designee.

"Discontinued or blank sign" means a registered sign not displaying products or service advertising contents for a period of one (1) year shall be considered discontinued and removed at the expense of the sign owner. Leasing information shall be considered advertising content for purposes of this definition.

"Divided highway" means that part of a primary highway which has been constructed as divided, dual lane fully controlled access to the throughways except for the established interchanges.

"Federal-aid primary highway" means any highway at any time officially designated as part of the Federal-aid Primary System by the Department and approved by the appropriate authority of the federal government.

"Grandfathered sign" means a sign which was lawfully erected but does not comply with all the provisions of the State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not non-conforming signs. (Same as Non-conforming (grandfathered) sign.)

"Illegal sign" means signs that are situated in control areas adjacent to Interstate and Federal-aid Primary Systems which are outside zoned and unzoned commercial or industrial areas, are not listed on the 1972 inventory and do not qualify either as on-premise, directional or official signs and notices required or authorized by law. Signs erected within zoned and unzoned commercial and industrial areas without the benefit of a permit or which are erected or maintained not in accordance with permit requirements are also illegal.

"Informational signs" mean signs containing directions or information about public persons or public places which are owned or operated by federal, state, or local governments or their agencies. It also refers to public or privately owned natural phenomenon, historic, cultural, educational, or religious sites, and areas of natural scenic beauty or naturally suited for outdoor recreation, when deemed to be of interest to the traveling public. Informational signs do not include political campaign signs or posters.

"Interstate highway" means any highway at any time officially designated a part of the National System of Interstate and Defense Highways by the Department and approved by the United States Department of Transportation.

"Lease" means an agreement, in writing, by which possession or use of land or interests therein is given by the owner to another person for a specified period of time.

"License" means the privilege granted by the Department to do business as an outdoor advertising company in the State of Oklahoma.

"Main traveled way" means the traveled portion of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main traveled way. It does not include such facilities as frontage roads, turning roadways, or parking areas.

"Maintain" means to hold or keep in a state of continuing existence.

"Non-conforming (grandfathered) sign" means a sign which was lawfully erected but does not comply with all the provisions of the State law or State regulations passed at a later date or later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not non-conforming signs.

"Non-conforming (grandfathered) sign maintenance" means the sign must remain substantially the same as it existed on the effective date of State law. (Also see "Customary Maintenance" and "Destroyed" above.)

"Official signs and notices" mean signs and notices erected and maintained by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal or state law for the purpose of carrying out an official duty or responsibility. These signs must not exceed thirty-two (32) total square feet in area.

"On-premise sign" mean signs consisting solely of the name of the establishment, or which identify the establishment's principal or accessory products, or the services which are offered on the business premises. Signs advertising the sale or lease of the property on which they are located, are considered on-premise signs. Signs located on narrow strips of land contiguous to the advertised activity when the purpose clearly is to circumvent the Oklahoma Highway Advertising Control Act shall not qualify as on-premise signs. (See 730:35-5-14)

"Outdoor advertising business" means any person, firm or corporation which builds, leases, sells, or rents advertising space upon an outdoor advertising sign, display or device to others for profit.

"Permittee" means a person, firm or corporation who has applied for and received a permit from the Department for the express purpose of removing brush and/or trees from the state highway rights-of-way.

"Primary highway" means any highway at any time officially designated a part of the Federal-aid Primary System by the Department and approved by the United States Department of Transportation.

"Public utility signs" mean warning signs, informational signs, notices or markers which are customarily erected and maintained by publicly or privately owned utilities, as essential to their operations.

"Rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control for the convenience of the traveling public.

"Scenic turnout" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control which provides a shelter off the main-traveled way for stopped vehicles for the purpose of viewing an area of scenic significance.

"Service club and religious notices" mean signs and notices relating to the existence or meetings of non-profit service clubs, including but not limited to, garden clubs, charitable associations or religious services. Service club or religious notice signs shall not exceed eight (8) square feet in area.

"Sign, outdoor advertising or outdoor advertising device" means any outdoor sign, display, device, notice, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the Interstate or National Highway System. It includes permanent or portable installations, but shall not include surface markers showing the location or route of underground utility facilities or pipelines or public telephone coin stations installed for emergency use. It also shall not include temporary election candidate campaign signs or voters' referendum signs, if erected not more than 45 days prior to an election and removed within 7 days following the election or within 7 days following the final election if more than one election is required to fill the office or settle the referendum issue.

"Sign facing" means the total advertising surface of an outdoor advertising sign, display or device which is visible from the main-traveled way of the highway. For purposes of this definition, a single sign facing may consist of one or more sign panels facing in one direction.

"Sign panel" means a separate advertising area contained upon a sign facing, including any border or trim, but excluding ornamental base or apron supports; provided however, that such ornamental base or apron supports shall not contain an advertising message or messages.

"Sign standards by sign type" means Class "A" signs, Class "B" signs, Class "C" signs, Class D signs, "on premise" signs, exempt signs, prohibited signs and all their zoning, spacing, lighting and size requirements. (See 730:35-5-12, 730:35-5-13, 730:35-5-14, 730:35-5-15, and 730:35-5-16.)

"Sign structure support" includes all structures, poles, bracings, lateral supports and other material of every kind and nature used to support a face or surface on which outdoor advertising is placed, whether located on or attached to the surface of the earth or man-made structure.

"The Act" means the Highway Advertising Control Act contained in Title 69 O.S., Section 1271 et seq., and any amendments thereto.

"To erect", and variants of the verb "to erect", means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. These shall not include any of the foregoing activities when performed as incident to the change of advertising message or customary maintenance of the sign structure. Any relocation of the sign structure, however slight, from one site to another site shall be deemed to be within the meaning of the verb "to erect" and its variants.

"Truck weighing station" means an area or site established and maintained within or adjacent to the highway right-of-way and upon which are located permanent truck weighing facilities operated by the Department, the Department of Public Safety, and/or the Oklahoma State Tax Commission.

"Unzoned commercial or industrial areas" means those areas which are not zoned by state or local law, regulation or ordinance, and on which there is located one or more permanent structures devoted to a commercial or industrial activity or on which a commercial or industrial activity is actually conducted, whether or not a permanent structure is located thereon. No area upon which a commercial or industrial activity is conducted shall be considered as an unzoned commercial or industrial area if the commercial or industrial activity is conducted as a method, scheme or ruse designed for the purpose of conducting the business of outdoor advertising.

"Urban area" means an urbanized area or, in the case of an urbanized area encompassing more than one state, that part of the urbanized area in each state, or an urban place as designated by the Bureau of the Census having a population of five thousand (5,000) or more and not within any urbanized area,

within boundaries to be fixed by responsible state and local officials in cooperation with each other, subject to approval by the Secretary of Transportation. Such boundaries shall, as a minimum, encompass the entire urban place designated by the Bureau of the Census.

"Visible" means capable of being seen without visual aid by a person of normal visual acuity.

"Zoned commercial or industrial areas" means those area zoned for commercial or industrial activities under the authority of any state law, or city or county zoning ordinance of this state. Any commercial or industrial area created or established by any zoning authority must actually be capable of supporting commercial or industrial activities. Any state or local zoning action which is not a part of a comprehensive zoning plan, such as strip zoning, spot zoning, or variances created primarily to allow outdoor advertising structures, will not be recognized by the Department as zoning for outdoor advertising purposes.

730:35-5-18. Vegetation management

(a) In accordance with 69 O.S. § 1275(e), the Department of Transportation is authorized to enter into written agreements ("Vegetation Clearing Agreement") with outdoor advertising sign owners/permit holders for the purpose of conducting vegetation management activities within a specific area on state highway rights-of-way.

(b) Unless otherwise noted, the following establishes the procedures, processes and criteria for an outdoor advertising sign owner/permit holder to make visible or ensure future visibility of the facing of a legal outdoor advertising sign:

(1) No person, firm or corporation shall trim or remove brush or trees from any portion of the state highway rights-of-way without first obtaining a written permit from the Department. The process for obtaining a vegetation clearance permit is as follows:

(A) Application for a clearance permit shall be submitted to the appropriate Field Division Engineer using forms provided by the Department.

(B) Upon issuance, a permit shall be valid for a duration of up to six (6) months.

(C) The fee shall be two hundred dollars ($200) per clearance area.

(2) A copy of the approved clearance permit shall be available on the worksite for inspection at all times.

(3) No clearance permit shall be issued for a sign which has been deemed illegal by the Outdoor Advertising Control Branch as a result of, but not limited to, violations of the Highway Advertising Control Act of 1968 (69 O.S. § 1275).

(4) The Permittee will not occupy or operate any equipment within designated wildflower plots from initial growth until after the flowers have gone to seed. Additionally, any necessary equipment will not be left unattended on the rights-of-way within thirty (30) feet of the roadway shoulder.

(5) The Permittee shall be solely responsible to ensure that proper agreements for vegetation clearance is granted from all adjacent property owners of the clearing area including the owner of the property upon which the outdoor advertising sign is located. The permit holder shall also be held solely responsible for any damages to fences, traffic signs, guardrails, or other highway features resulting from vegetation clearance operations.

(6) All vegetation management activities shall be done in a workman-like manner and the cleared area shall be left in a neat condition upon completion of the work. Brush and tree clearing and debris removal will be contiguous within the designated area and selective clearing is not permitted. The burning of brush piles is not permitted, therefore, all brush and tree debris must be removed from the highway right-of-way within ten (10) days after clearing.

(7) All efforts will be made by the permittee to prevent erosion from occurring as a result of vegetation management activities.

(8) A Permittee shall be required to comply with any indemnification and assumption of risk clause(s) as part of the "Vegetation Clearing Agreement". A Permittee shall also be required to keep in force liability insurance throughout the permit period, as stated in the "Vegetation Clearing Agreement".

(9) All operations on state highway rights-of-way must be performed in accordance with the stipulations put forth in the "Vegetation Clearing Agreement". The Department reserves the right to cancel any and/or all clearance permits.

(c) The aforementioned procedures, processes and criteria are applicable to any person, firm or corporation that intends to perform brush or tree trimming or removal on state highway rights-of-way.

(d) All vegetation management activities are subject to Oklahoma Law as stated at 69 O.S. § 1213.

[OAR Docket #12-733; filed 5-25-12]

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

[OAR Docket #12-728]

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The rule amendments provide current legislative language, reference to a statute that was passed in 2009 and correction of keyboarding error.
CONTACT PERSON:
Marie Saatkamp, 405-743-5455

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-1. Rationale; corporation status; taxing authority

(a) **Clientele.** The concept of technology centers, embraces career and technology education for all who can benefit. Specifically, the Carl D. Perkins Vocational Education Act of 1984 (PL98-524) and subsequent amendments thereto provide training for high school students; persons who have completed or left high school; persons employed but who need training or retraining to achieve stability or advancement in employment; and for persons who are academically or socioeconomically disadvantaged or who have physical or mental disabilities. Enrollment in a technology center or to specific career majors shall not be contingent upon any single measure but upon a combination of factors including but not limited to achievement levels, aptitude, interest, work history, and ability to benefit in terms of employment.

(b) **Establishment.** Technology center districts may be established through criteria and procedures established by the State Board and shall be operated in accordance with the rules and regulations of the State Board [70 O.S. 2011, §14-104 and Section 9B, Article X, Oklahoma Constitution].

(c) **Official name-technology centers.** *Its official name shall be designated by the State Board of Career and Technology Education, in which name it may sue and be sued, and be capable of contracting and being contracted with, and holding real and personal estate* [70 O.S. 2011, §14-108(B)]. The State Board shall authorize local area school districts to utilize unofficial names for marketing purposes. The State Board recognizes the term Technology Center. Any exceptions must be approved by the State Board.

(d) **Corporation status.** *A technology center district shall be a body corporate and shall possess the usual powers of a corporation for public purposes* [70 O.S. 2011, §14-108(B)].

(e) **Operational mill levy.** Constitutional authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for operational purposes. If approved by the majority of the voting electors, it needs to be voted only once, unless there is a need to increase or decrease a millage levy currently under five mills. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(f) **Building fund levy.** Authorization has been granted to vote up to five mills on the dollar valuation of the taxable property in a technology center district for building purposes pursuant to the provisions of 70 O.S.Supp.2011, Section 1-118.1~~.Any millage levy voted is effective for one year. If a building fund levy is needed for multiple years, it shall be voted upon each year.~~and Article X, Section 10, of the Oklahoma Constitution. *The building fund of any technology center school district shall consist of all monies derived from the proceeds of a building fund levy of not to exceed five (5) mills in any year, voted by the people of a school district, monies appropriated by the state for the purpose of capital expenditures or projects, and monies donated to a school district for the purpose of capital projects or improvements and may be used for erecting, remodeling, repairing or maintaining school buildings, for purchasing furniture, equipment and computer software for instructional and non-instructional purposes, for repairing and maintaining computer systems and equipment, for paying energy and utility costs, for purchasing telecommunications utilities and services, for paying fire and casualty insurance premiums for school facilities, for purchasing security systems, for paying salaries of security personnel, or for one or more, or all, of such purposes. Proceeds of such levies shall not be required to be used during the year for which a levy is made but may accumulate from year to year until adequate for the purposes intended. The building fund hereinabove defined is hereby declared to be a current expense fund, but shall not be considered a part of the general operating fund. No monies derived from the proceeds of the school levies made pursuant to the provisions of Article X, Section 9B of the Oklahoma Constitution may be placed in the building fund provided by this section.*

(g) **Local incentive levy.** Authorization has been granted to vote up to five mills local incentive levy on the dollar valuation of the taxable property in a technology center district. This levy may be used for operational or capital needs purposes. This levy, when approved, shall be made each fiscal year thereafter until repealed by a majority of the electors of the technology center district voting on the question at an election called for that purpose. If the existing millage levy is less than five mills, and it is necessary to increase the millage, the question to be voted should be on the increased millage only and not on the total millage, and should be so specified on the voting ballot.

(h) **Capital outlay bonds.** Authorization has been granted to vote for capital improvements (such as land, buildings, and equipment) that are financed by the issuance of the technology center district's general obligation bonds. Bonds so voted upon and approved by a majority of the votes cast, once issued, shall not cause the technology center district to become indebted in an amount, including existing indebtedness, in the aggregate exceeding five percent of the valuation of the taxable property in the technology center district.

[OAR Docket #12-728; filed 5-24-12]

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

[OAR Docket #12-729]

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The rule amendments clarify the curriculum direction/emphasis for Technology Engineering programs and explains where the teacher certification requirements can be located.
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, 2012:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT *CAREER*TECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school students (grades 8 through 12) and adults. Secondary students must have a supervised agricultural experience project. Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) **Business and Information Technology Education.** Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health Careers Education.**

(A) ***Career*Tech health careers.** Health Careers Education programs are designed to prepare junior high students, high school students and adults for employment in a health career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades 8 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Science Technology Engineering and Mathematics (STEM).** Science Technology Engineering and mathematics programs are designed to prepare students grades 6-12 for hands-on and problem based curriculum that allows students to explore opportunities in Science, Technology, Engineering and Mathematics and prepares students for postsecondary transition and pathways for careers in STEM.

(7) **Technology Engineering /TechConnect.** Technology Engineering programs are designed for students in grades 5 through 10 who desire an opportunity to explore and experience technological occupations. These programs are designed to carry on technological concepts and problem-solving methods learned in the lower grade programs (i.e.: Integrating Concepts and Lessons, Missions curriculum, The Block Academy, Airbase). The programs also tie to Agriculture Education, Business Education, FACS Education, Health Education, Marketing Education, and Trade and Industrial Education in the upper grades at comprehensive high schools and technology centers. These programs give hands-on projects based core curriculum supported through the occupational areas.

(8) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools***.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see 780:20-3-1(e) and 780:20-3-2(b)(7)(A)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Engineering, TechConnect, Career Transitions Education, and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health Careers Education program administrator.

(F) **Science Technology Engineering and Mathematics.** Teachers of Science Technology Engineering and Mathematics may be allowed to teach one or two related courses, subject to approval of the appropriate cluster administrator. Science and Math courses listed in the STEM Career Major will be counted as a STEM course, not a related course.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through

the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the *Career*Tech student organization, FFA.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business and Information Technology Education.**

(i) **Methods of delivery.** The Business and Information Technology Education programs provide three methods of delivery:

(I) Business and Information Technology Education internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12. Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and Information Technology Education programs in technology centers shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordinatio**n. Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health Careers Education.**

(i) **Comprehensive Schools.** Programs in 7th, 8th, and 9th grade or high schools vary in length and may be offered in one, two or three blocks of time. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Technology Centers.** Programs vary in length and in hours per day according to accrediting bodies and career major requirements.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first- and second-year marketing management students in the same class without written permission from the State Department of Education.

(iii) **Technology/equipment.** Marketing Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment.

(G) **Technology Engineering/TechConnect.**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the Technology Engineering/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. Technology Engineering /TechConnect programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, Technology Engineering/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. Technology Engineering /TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of a Technology Engineering/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Engineering/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. Technology Engineering/TechConnect programs shall consist of occupational instruction for two consecutive periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the Technology Engineering/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students shall have access to appropriate career and technology student organizations that are

consistent with the related *Career*Tech programs as well as other personal development components. Technology Engineering/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. Technology Engineering /TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed to introduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics, Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services, Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** A six period day will require two, two-hour blocks or four one-hour blocks with one hour of related instruction for a full time program. One two-period block or less than four one-hour period blocks will constitute a half-time program in a six period day. A seven period day will require three two-hour blocks or five one-hour blocks with one hour of related instruction for a full time program. Two two-hour blocks or less than five one-hour blocks will constitute a half-time program in a seven period day.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Engineering/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Engineering/TechConnect classes, which are each one period in length, shall be considered as a full-time *Career*Tech teacher in a six period day. A Technology Engineering/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes in a seven period day.

(V) **Technology Engineering /TechConnect program operation recommendations.** Technology Engineering/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should offer applied academic courses in English, mathematics, and science for Technology Engineering/TechConnect students. Enrollment in applied courses should be consistent with each Technology Engineering/TechConnect student plan of study. Enrollment in the Technology Engineering/TechConnect applied academic courses should not be limited to Technology Engineering /TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Engineering/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Engineering division.

(H) **Technology Engineering.**

(i) **Course duration.** Each technology engineering course shall be taught in a one-period blockof time (45-55 minutes).

(ii) **Curriculum.** The curriculum shall emphasize the following technology clusters: Architecture and Construction, Arts, A/V and Communications, Information Technology, Manufacturing, Transportation, Distribution and Logistics, Agriculture, food and natural resources, Health Science and Science, Technology, Engineering & Mathematics. Through these, all sixteen of the nationally recognized Career Clusters will be covered. Also, emphasis will be placed on Gateway to Technology (GTT) and Engineering by Design (Ebd) national pre-engineering curriculums.

(iii) **Four periods per day.** Each program shall implement the technology engineering curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv) **Equipment.** Technology Engineering programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state program assistance funds to purchase this equipment.

(I) **Trade and Industrial Education.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high

schools may be enrolled for one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Introduction to Agricultural Science is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business and Information Technology Education.**

(i) **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology internship. Other Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers.** Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen Living, and Life Management-20 Students

(II) Family and Consumer Sciences I and II-20 Students

(III) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 Students

(IV) Non-laboratory 60 hour courses-25 Students

(V) Laboratory 60 hour courses -21 students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education

(D) **Health Careers Education.**

(i) **Comprehensive Schools.** A minimum of ten and a maximum of eighteen students shall be enrolled in each course/section of a comprehensive school health careers education program.

(ii) **Technology Centers.**

(I) **Full time high school health careers programs.** A minimum of ten and a maximum of eighteen students per instructor shall be enrolled in a Health Careers Education program. Those programs utilizing student-centered learning as the primary method of instruction shall have a maximum of fifteen students per instructor. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(II) **Full-time adult-only health careers programs.** A minimum of eight and a maximum of twelve students per instructor shall be

enrolled in a full-time adult-only Health Careers Education program. Program enrollment may also be limited by national and/or state accrediting bodies, by equipment, classroom and/or laboratory facilities and by clinical site availability.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and Entrepreneurship program shall not exceed 25 students per marketing management teacher-coordinator. A maximum of 25 students per class may be enrolled in the marketing internship. Other Marketing Education courses may enroll a maximum of 25 students.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students. "** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) **Technology Engineering and TechConnect.** The maximum enrollment for each period of Technology Engineering shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and career transitions programs, which may have 50 students per career transitions teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-4. Instructors

(a) **Certification on file.** All *Career*Tech secondary teachers shall have (on file in the local education agency) an appropriate teaching certificate issued by the Certification Section of the State Department of Education.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a *Career*Tech teacher applicant meets *Career*Tech certification requirements before placing the applicant under contract. Certification requirements are found in the ***Teacher*** ~~***Education and Certification Handbook***~~**Certification Guide for School Staff Assignments**on the ~~(~~Oklahoma State Department of Education~~).~~ web site.

(1) **Occupational division approval.** All *Career*Tech teachers must have the *Career*Tech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All *Career*Tech teachers must complete the specific occupational division's requirements for *Career*Tech certification renewal and be approved by the appropriate program administrator.

(c) **Health Careers Education.**

(1) **Faculty requirements.** Faculty shall hold current credentials as a licensed, certified and/or registered health care professional and must meet the requirements of the local education agency, Health Careers Education Division, and the respective accrediting agency.

(A) **Technology Centers: High School Health Careers Programs.** Faculty holding a baccalaureate degree will be required to have additional coursework specific to Career and Technology teacher education. These requirements will be posted on the Health Careers Education website. Faculty shall have a degree plan on file with the Health Careers Education division and provide documentation in the form of transcripts demonstrating yearly progress toward obtaining required coursework.

(B) **Technology Centers: Adult Only Health Careers Programs.** Faculty shall hold a minimum of an Associates' degree or be on a degree plan making yearly progress toward completion. State and national accreditation standards may indicate additional faculty requirements towards advanced degrees. Faculty hired before 2010 will be exempt from this rule.

(2) **On-file applications.** Faculty shall have an application on file in the Health Careers Education office, including a Statement of Qualifications form, all current transcripts and, a copy of professional credential or credential verification, and, if appropriate, current teaching certificate or application for teaching certificate.

(3) **Clinical experience.** Faculty must have a minimum of two years' work experience in a clinical setting within the last five years prior to their first teaching experience. The Health Careers Education Program Manager must approve any variations.

(d) **Science Technology Engineering and Mathematics (STEM). Faculty requirements.** Faculty teaching technical courses shall hold a science, math, trade industrial, technology engineering or appropriate CTE certification approved by the career major administrator Teachers teaching math and/or science academic courses must meet the requirements of the Oklahoma State Department of Education for that academic area.

(e) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult *Career*Tech instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

[OAR Docket #12-729; filed 5-24-12]

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

[OAR Docket #12-703]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter11. Publications
800:1-11-1. Charges for workshops, publications and other material [AMENDED]
AUTHORITY:
Title 29 O.S., Sections 3-103 and 5-401; Article XXVI, Sections 1 and 3 of the constitution of Oklahoma; Department of Wildlife Conservation Commission
DATES:
Comment period:
December 1, 2011- January 13, 2012
Public Hearings:
Date: January 10, 2012
Time: 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Poteau - Kiamichi Vo-Tech Center, 1509 South McKenna
Adoption:
March 5, 2012
Submitted to Governor:
March 9, 2012
Submitted to House:
March 9, 2012
Submitted to Senate:
March 9, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Approved May 17, 2012 by HJR 1107
Final Adoption:
May 17, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rules willamend an Outdoor Store item by updating the price for a Cy Curtis book according to current production costs and will include a one-year subscription to Outdoor Oklahoma magazine.
CONTACT PERSON:
Nels Rodefeld, Chief of Information & Education Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3855 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 11. PUBLICATIONS

800:1-11-1. Charges for workshops, publications and other material

(a) The following charges, with appropriate postage fees where applicable, will be assessed for the following workshops, publications and other materials:

(1) Basic charges for Information and Education Division publications are as follows:

(A) Oklahoma Furbearers: $2.00

(B) Managing Ponds Fisheries in Oklahoma: $5.00

(C) Oklahoma Wildlife Management Areas Atlas: 25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(D) Cy Curtis Awards book: ~~$10.00~~$25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(2) Basic charges for Administration Division materials are as follows:

(A) Oklahoma Waterfowl Prints: $129.00

(3) Basic charges for Wildlife Diversity publications, workshops and materials are as follows:

(A) Attracting Birds: $2.00

(B) Guide to Reptiles and Amphibians of Oklahoma: $25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(C) Bird Identification Guide: $25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(D) Wildlife Posters: $10.00

(E) Bat House Builder's Handbook $12.00

(F) Bat Viewing Workshops: $20.00

(G) Landscaping for Wildlife: A Guide to the Southern Great Plains: $30.00 includes wildscape certification and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(H) Oklahoma ConserVacation Outings: $300/person

(I) Pocket Guide to Prairie Birds: $2.00

(J) Butterflies of Kansas, Oklahoma and North Texas: $25.00 and includes one year subscription to Outdoor Oklahoma magazine. If purchaser is already a subscriber, they can transfer subscription.

(4) Basic Charges for Education workshops and materials are as follows:

(A) Hunter education certification replacement cards: $5.00

(5) Basic charges for miscellaneous publications and materials are as follows:

(A) Habitat Donor Patch, Cap or T-shirt: $20.00

(B) Outdoor Oklahoma Cap: $20.00

(C) Outdoor Oklahoma Magazine

(i) Single issue copies: $3.00

(ii) One year subscription: $10.00

(iii) Two year subscription: $18.00

(iv) Three year subscription: $25.00

(D) Waterfowl Identification in the Central Flyway: $2.00

(b) These fees do not reflect postal or handling charges.

(c) Publications and materials not listed in (a) of this Section shall be cost plus handling until a fee is established. Fees may be waived for education and promotion purposes.

[OAR Docket #12-703; filed 5-23-12]

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

[OAR Docket #12-704]

RULEMAKING ACTION:
Permanent final adoption

RULES:
Subchapter 1. Harvest and Possession Limits
800:10-1-4. Size limits on fish [AMENDED]
800:10-1-5. Bag limits on fish [AMENDED]
Subchapter 5. Area Restrictions and Special Fees
800:10-5-3. Designated trout areas [AMENDED]

AUTHORITY:
Title 29 O.S., Sections 3-103, 5-401and 6-302; Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission

DATES:
Comment period:
December 1, 2011- January 13, 2012
Public Hearings:
Date: January 10, 2012
Time: 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Poteau - Kiamichi Vo-Tech Center, 1509 South McKenna
Adoption:
March 5, 2012
Submitted to Governor:
March 9, 2012
Submitted to House:
March 9, 2012
Submitted to Senate:
March 9, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 8, 2012.
Final Adoption:
May 8, 2012
Effective:
January 1, 2013
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rules willput the Raymond Gary area in the Conservation fishing areas, delete the slot limit on large and smallmouth bass at Lake Elmer Thomas, add Black Kettle National grasslands to list of impoundments with 14 inch length limit on black bass, standardize regulations statewide on striped bass to a limit to five except for lake Texoma, standardize regulations on Kaw Reservoir and remove trout license requirements which were eliminated under Title 29; 4-120.
CONTACT PERSON:
Barry Bolton, Chief of Fisheries Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-3721 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JANUARY 1, 2013:

SUBCHAPTER 1. HARVEST AND POSSESSION LIMITS

800:10-1-4. Size limits on fish

There are no length and/or size limit restrictions on any game or nongame fish, except as follows:

(1) All largemouth and smallmouth bass less than fourteen (14) inches in total length must be returned to the water unharmed immediately after being taken from these waters:

(A) **Lakes and Reservoirs** - Adair Recreation Area, Altus-Lugert, Arcadia, Birch, Broken Bow, Carl Albert, Carl Blackwell, Copan, Draper, Eufaula, Ft. Cobb, Ft. Gibson, Foss, Grand including all tributaries to state line, Greenleaf, Hall, Hefner, Heyburn, Hudson, Hugo, Kaw, Keystone, Lone Chimney,

~~Nanih Waiya,~~ Oologah, Overholser (including tailwaters and downstream to NW 10th St. bridge), Pine Creek, ~~Raymond Gary,~~ Sardis, Skiatook, Sooner, Taft, Texoma, Thunderbird, Tom Steed, Vanderwork, Wayne Wallace,Waurika and Wister (Wister Lake boundaries are US Highway 271 bridge on Fourche Maline River, US Highway 59 bridge on Poteau River and the low water dam, one-half mile above county road bridge number 156, on Holson Creek)~~.~~ and all impoundments on Black Kettle National Grasslands.

(B) **McClellan-Kerr Arkansas River Navigation System -** All lakes, cutoffs and oxbows from the Oklahoma-Arkansas line to the Port of Catoosa, including R.S. Kerr, Webbers Falls, W.D. Mayo, Chouteau and Newt Graham Reservoir.

(C) **Department of Wildlife Conservation fishing areas** - Lakes Burtschi, Chambers, Elmer, Etling, Fugate, Jap Beaver, Ozzie Cobb, Schooler, Vincent, Watonga, Dahlgren, and all the ponds and streams within the following Department WMA's, Atoka, Beaver River, Bolen Hollow, Gruber/Cherokee, Cookson, Ellis Co., Ft. Gibson, James Collins, Lexington, Nanih Waiya, Okmulgee, (excluding the Deep Fork River), Pushmataha, Raymond Gary, Robbers Cave, Robert S. Kerr, Sandy Sanders, Spavinaw, Stringtown, and all ponds and lakes in the Ouachita National Forest.

(D) Lower Illinois River below Tenkiller Dam, including the old river channel.

(2) All largemouth and smallmouth bass between thirteen (13) and sixteen (16) inches in total length must be returned unharmed immediately after being taken from lakes Chimney Rock (W.R. Holway), ~~Elmer Thomas,~~ Arbuckle, Okmulgee and Tenkiller Lake (downstream from Horseshoe Bend boat ramp).

(3) All crappie (Pomoxis sp.) less than 10 inches in total length must be returned to the water unharmed immediately after being taken from Lakes Arbuckle, Tenkiller, Hudson, Texoma, Ft. Gibson, including all tributaries and upstream to Markham Ferry Dam and Grand Lake, including all tributaries to state line.

(4) All flathead catfish (Pylodictis olivaris) less than 20 inches in total length must be returned to the water unharmed immediately after being taken statewide.

(5) All walleye, sauger, and saugeye (sauger x walleye hybrid) less than 18 inches in total length must be returned to the water unharmed immediately after being taken statewide, except at Altus-Lugert, Ellsworth, Foss, Fort Cobb, Lawtonka and Murray lakes and the respective tailwaters, where walleye, sauger and saugeye less than 14 inches in total length must be returned to the water unharmed immediately and at Great Salt Plains Reservoir and tailwater where the size limit does not apply and in the Illinois River below Tenkiller Dam and the Arkansas River from Keystone Dam downstream to the Oklahoma state line where all sauger less than 16 inches must be returned to the water unharmed immediately.

(6) All largemouth and smallmouth bass between sixteen (16) and twenty-two (22) inches in total length must be returned to the water immediately after being taken from McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County).

(7) All rainbow trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road. All brown trout less than twenty (20) inches in total length must be returned to the water immediately after being taken from the lower Mountain Fork River from Broken Bow Dam downstream to the U. S. Highway 70 bridge, and from the lower Illinois River trout stream from Tenkiller Dam downstream to the U. S. Highway 64 bridge.

(8) All blue catfish and channel catfish less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Texoma Lake.

(9) All smallmouth bass between nine (9) and twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek. Possession of smallmouth bass between nine (9) and twelve (12) inches in total length at these streams is prohibited.

(10) All smallmouth bass less than twelve (12) inches in total length must be returned to the water unharmed immediately after being taken from Glover River from the confluence with the Little River upstream to the "Forks of the Glover River". Possession of smallmouth bass less than twelve (12) inches in total length at this stream is prohibited.

(11) All black bass (largemouth, spotted and smallmouth) less than fourteen (14) inches in total length must be returned unharmed immediately after being taken from the Blue River Public Fishing Area.

(12) All striped bass less than twenty (20) inches must be returned unharmed immediately after being taken from Sooner Reservoir.

800:10-1-5. Bag limits on fish

No person shall, during any one day, take, attempt to take, kill, or harvest more than:

(1) Six (6) largemouth or smallmouth bass or six in aggregate, except in "Close To Home" fishing water where all largemouth bass caught must be returned to the water unharmed immediately after being taken (no harvest allowed), at Texoma Reservoir where the limit is five (5), largemouth, smallmouth or spotted bass or five in aggregate, at Lake Konawa, McGee Creek Lake, Dripping Springs Lake and Crowder Lake (Washita County)

where the limit is six (6) of which only one (1) may be twenty-two (22) inches or longer at Baron Fork Creek, Flint Creek, Illinois River upstream from the Horseshoe Bend boat ramp, Lee Creek, and Little Lee Creek where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate, of which only one (1) smallmouth bass may be twelve (12) inches or longer, in Glover River from the confluence with Little River upstream to the "Forks of the Glover River" where the limit is six (6) largemouth, smallmouth, or spotted bass or six in aggregate of which only three (3) may be smallmouth bass,and at the Blue River Public Fishing Area where the limit is six (6) largemouth, smallmouth or spotted bass or six in aggregate.

(2) Fifteen (15) channel and/or blue catfish, or fifteen (15) in aggregate, of which only one (1) blue catfish may be 30 inches in length or larger; except at all U.S. Forest Service and State Park lakes (not including Lake Murray) and Department of Wildlife Management Area ponds and all Department of Wildlife Conservation fishing areas, in "Close To Home" fishing waters and all waters within the Wichita Mountains National Wildlife Refuge, where the limit is six (6). For scuba divers with spearguns, the limit is three (3) per day or three (3) in aggregate from May 1 through August 31, annually.

(3) Thirty-seven (37) crappie (Pomoxis sp.) except at Blue River Public Fishing and Hunting Area where the limit is six (6) and at lakes Arbuckle, Tenkiller, Hudson, Ft. Gibson including all tributaries and upstream to Markham Ferry Dam and Grand Lake including all tributaries to state line where the limit is fifteen (15).

(4) Six (6) rainbow trout - possession limit of twelve (12) after first day, except in the lower Mountain Fork River trout stream from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, and in the lower Illinois River trout stream from the USGS stream gauge downstream to the gravel pit county road where the limit is one (1) rainbow trout per day twenty (20) inches or longer in total length (no culling); and in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness downstream approximately 2 mile to a marker cable where all trout caught must be released immediately from November 1 to March 1 (thereafter, statewide trout bag limit applies).

(5) Six (6) brown trout, except in the lower Mountain Fork River trout stream below Broken Bow dam downstream to the U. S. Highway 70 bridge, and in the lower Illinois River trout stream from Tenkiller Dam downstream to US Highway 64 bridge where the limit is one (1) fish per day twenty (20) inches or longer in total length.

(6) Six (6) walleye, sauger and/or saugeye, or six (6) in aggregate.

(7) ~~Fifteen (15)~~Five (5) striped bass and/or striped bass hybrids~~ of which only five (5) may be twenty (20) inches or longer~~, except as designated in 800:10-1-5((8), (10) and (11)).

(8) Ten (10) striped bass and/or striped bass hybrids or ten (10) in aggregate of which only two (2) may be twenty (20) inches or longer in Texoma Reservoir.~~and five (5) striped bass and/or striped bass hybrids or five (5) in aggregate in the Red River below Denison Dam (no culling). This paragraph shall become effective September 1, 1996.~~

(9) Ten (10) flathead catfish, except in Lake Texoma where the daily limit is five (5), and for noodlers and scuba divers the daily limit is three (3) from May 1 through August 31, annually.

(10) Twenty (20) ~~striped bass,~~ striped bass hybrids and/or white bass, or twenty (20) in aggregate, of which only five (5) may be twenty (20) inches or longer in lakes Altus-Lugert, Birch, Canton (Canton Lake boundaries are from State Highway 281 to one thousand (1,000) feet below Canton Dam), Carl Blackwell, Foss, Ft. Cobb, Kaw, Konawa, Tom Steed, Sooner and Waurika, including tailwaters and Grand including all tributaries to stateline and below Grand River Dam (Pensacola Dam) downstream to State Highway 82 bridge and Oologah Lake including upstream on all tributaries to stateline and downstream below the dam to the mouth of the Caney River.

(11) Five (5) striped bass and/or striped bass hybrids, in aggregate, of which only two (2) may be 20 inches or longer in Arcadia Lake and Skiatook Lake.

(12) Twenty-five (25) white bass in Lake Texoma.

(13) One (1) paddlefish (Polydon spathula) per day on Sunday, Tuesday, Wednesday, Thursday, and Saturday, statewide. Catch and release of paddlefish only (no harvest) is permitted on Monday and Friday, statewide. Possession of paddlefish in the field is prohibited on Monday and Friday, statewide. The catch and release of paddlefish is permitted year round by use of rod and reel, trotline and throwlines. Paddlefish must be released immediately unless kept for the daily limit. Paddlefish taken by bow and arrow, gigs, spears or spearguns shall not be released. Paddlefish caught and placed on a stringer or otherwise held in possession must be tagged immediately and cannot be released (no culling). Each person must keep their own paddlefish distinctly separate from paddlefish taken by other fishermen. Each cleaned paddlefish, or its meat, eggs, or carcass, must also be tagged and kept separate from all other cleaned paddlefish or its parts. Tagged means plainly labeled with the taker's paddlefish permit number. Paddlefish or their parts must remain tagged until the person in possession of the paddlefish or paddlefish parts has reached their residence. All paddlefish must have all viscera (internal organs) removed from the paddlefish before leaving the state. Persons fishing trotlines or throwlines must release all paddlefish on their lines, except the one (1) paddlefish held in possession for their daily limit, before leaving the trotline or throwline. Fishermen must cease snagging when they have taken their daily limit of paddlefish into possession.

(14) It shall be unlawful for any person, regardless of residency, age or disability, to fish for paddlefish or be in possession of paddlefish parts without having first secured from the Department of Wildlife Conservation or

its authorized agent, an annual paddlefish permit. Immediately upon taking possession of a paddlefish with the intent of harvesting said fish, the angler must record the date and time of harvest on the paddlefish permit. This permit must be carried on their person while fishing and/or in possession of paddlefish or parts and be produced for inspection upon the demand of any Oklahoma citizen or game warden.

(15) Release of striped bass and/or striped bass hybrids caught and placed on a stringer, in a live well or otherwise held in possession is prohibited statewide (no culling).

(16) One (1) alligator gar (Atractosteus spatula) per day, statewide, except during the period of May 1 through May 31 when angling for alligator gar by all angling methods is prohibited on Lake Texoma between the Highway 99 bridge upstream to the I-35 bridge. The catch and release of alligator gar is permitted year round, except during the closure referenced above, by use of rod and reel, trotline and throwlines. Alligator gar must be released immediately unless kept for the daily limit. Persons fishing trotlines or throwlines must release all alligator gar on their lines except the one alligator gar held in possession for their daily limit, before leaving the trotline or throwline. Alligator gar taken by bow and arrow, gigs, spears or spearguns shall not be released. Alligator gar caught and placed on a stringer or otherwise held in possession cannot be released (no culling). Anglers must cease snagging when they have taken their daily limit of alligator gar into possession.

(17) Other fish do not have bag or possession limits.

SUBCHAPTER 5. AREA RESTRICTIONS AND SPECIAL FEES

800:10-5-3. Designated trout areas

(a) **Designated trout areas and seasons.** The following are the designated trout areas and trout seasons at each area:

(1) The Illinois River and its tributaries from the Tenkiller Ferry Reservoir Dam downstream to the Highway 64 Bridge near Gore, trout season is year-round.

(2) Blue River, within boundaries of the Blue River Public Fishing & Hunting Area (includes Landrum Wilderness Area and Plaster Wildlife Management Unit), trout season is from November 1 through March 31 of the following year; season is annual.

(3) Lake Watonga located within the boundaries of Roman Nose State Park, trout season is from the November 1 through March 31 of the following year; season is annual.

(4) The lower Mountain Fork River and tributaries from Broken Bow Dam downstream to U.S. Highway 70 bridge, excluding that portion from the mouth of Rough Branch Creek downstream to the Re-regulation dam. ~~However, while fishing in this portion of the Mountain Fork River, a valid annual trout license is required to have trout in possession.~~ Trout season is year-round.

(5) The North Fork of the Red River from Altus-Lugert Dam downstream to the low water dam at State Highway 44A, trout season is from November 1 through March 15 of the following year; season is annual.

(6) Lake Carl Etling located within the boundaries of Black Mesa State Park, trout season is from November 1 through April 30 of the following year; season is annual,

(7) The Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary a distance of approximately one and one-quarter (13) miles, trout season is from November 1 through March 15 of the following year; season is annual.

(8) Lake Pawhuska trout season is from November 1 through March 31 of the following year; season is annual.

~~(b) **Trout license requirement.** It shall be unlawful for any person, regardless of residency, age or disability, to fish in "Designated Trout Areas" during trout seasons without having secured from the Department of Wildlife Conservation or its authorized agent, a special, annual trout license. The special trout license shall be in addition to the regular fishing license requirements. The special trout license requirement shall apply only during the November 1 through March 31 special trout season on the Blue River, annually on the Illinois River and Mountain Fork River, from November 1 through March 31 on Lake Watonga, from November 1 through March 15 below Altus-Lugert Dam, from November 1 through April 30 on Lake Carl Etling, from November 1 through March 15 in the Fourche Maline River from Carlton Lake Dam downstream to the Robbers Cave State Park boundary, and from November 1 through March 31 on Lake Pawhuska. All persons possessing trout caught downstream of the Robbers Cave State Park boundary or in tributaries to the designated trout stream are also required to have a trout license during the season; no exceptions.~~

(~~c~~b) **General; area restrictions.** The following rules apply to designated trout areas and to specified locations within certain designated trout areas:

(1) It shall be unlawful to take or attempt to take fish from these areas during trout seasons except with rod and reel or pole and line, except collecting shad with cast nets is legal from the south boundary of the MarVal trout camp downstream to the Highway 64 bridge; only one (1) rod and reel or pole and line per person is allowed.

(2) Once a trout is reduced to possession by being placed on a stringer or in the creel of any type, said trout must count toward day's limit and cannot be released.

(3) Glass beverage contaners are prohibited at designated trout areas except in designated camping and parking areas.

(4) Fishing in the lower Mountain Fork River trout stream below Broken Bow dam from the Lost Creek water control structure downstream to the first Highway 259 Scenic bridge, including Evening Hole and the Lost Creek stream channel, and from the State Park Dam downstream to the mouth of Rough Branch Creek, is restricted to artificial flies and lures only and barbless hooks only.

(5) Fishing in the lower Illinois River trout stream below Tenkiller dam from the USGS stream gauge downstream to the gravel pit county road is restricted to artificial flies and lures only and barbless hooks only, except that

single barbed hooks, size 3/0 or larger, may be used only when fishing with natural bait.

(6) Fishing in the Blue River from its entry onto the Plaster Wildlife Management Unit/Landrum Wilderness Area downstream approximately 2 mile to a marker cable is restricted to artificial flies and lures only and barbless hooks only during the period November 1 to March 1, annually.

[OAR Docket #12-704; filed 5-23-12]

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

[OAR Docket #12-705]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 3. Hunting on Corps of Engineers Land
800:25-3-2. Areas open to shotgun with pellets and bow and arrow only [AMENDED]
800:25-3-3. Areas open to archery only [AMENDED]
Subchapter 7. General Hunting Seasons
Part 1. General Provisions
800:25-7-3. General provisions [AMENDED]
Part 3. Reptiles and Amphibians
800:25-7-7. General provisions [AMENDED]
Part 12. Antelope
800:25-7-48. Dates, open areas, bag limits and hunting hours and regulations [AMENDED]
Part 13. Deer
800:25-7-55. Deer-Youth Gun Season [AMENDED]
Part 14. Elk
800:25-7-57. Dates, open areas, bag limit and hunting hours [AMENDED]
Part 16. Black Bears
800:25-7-67. Dates, open areas, bag limits, hunting hours, leal means of take, quotas, and prohibited activities
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-83.1. Beaver River WMA - McFarland Unit [NEW]
800:25-7-90. Cherokee PHA [AMENDED]
800:25-7-91. Cherokee GMA [AMENDED]
800:25-7-94. Copan WMA [AMENDED]
800:25-7-94.1.1. Cross Timbers WMA [NEW]
800:25-7-111. Hulah WMA [AMENDED]
800:25-7-126. Mountain Park WMA [AMENDED]
800:25-7-131.1. Osage WMA - Rock Creek Unit [AMENDED]
800:25-7-131.2. Osage WMA - Western Wall Unit [AMENDED]
800:25-7-149.1. Three Rivers WMA [AMENDED]
Subchapter 9. Controlled Hunts
Part 3. Antelope
800:25-9-11. Cimarron and Texas County (west of Highway 136) landowner antelope permits [AMENDED]
Subchapter 29. Oklahoma Deer Management Assistance Program
800:25-29-3. Landowner responsibilities [AMENDED]
800:25-29-4. Department responsibilities [AMENDED]
AUTHORITY:
Title 29 O.S., Sections 3-103, 4-101, 4-144 and 5-401 Article XXVI, Sections 1 and 3 of the Constitution of Oklahoma; Department of Wildlife Conservation Commission
DATES:
Comment period:
December 1, 2011- January 13, 2012
Public Hearings:
Date: January 10, 2012
Time: 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Poteau - Kiamichi Vo-Tech Center, 1509 South McKenna
Adoption:
March 5, 2012
Submitted to Governor:
March 9, 2012
Submitted to House:
March 9, 2012
Submitted to Senate:
March 9, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 8, 2012.
Final Adoption:
May 8, 2012
Effective:
July 1, 2012
SUPERSEDED EMERGENCY ACTIONS:
Superseded Rules:
Subchapter 7. General Hunting Seasons
Part 19. Seasons on Areas Owned or Managed by the Oklahoma Department of Wildlife Conservation and the U.S. Fish and Wildlife Service
800:25-7-94.1.1. Cross Timbers WMA [NEW]
Gubernatorial Approval:
July 13, 2011
Register publication:
28 Ok Reg 2364
Docket number:
11-974
INCORPORATED BY REFERENCE:
n/a
ANALYSIS:
These rules will expand the hunting opportunity on Keystone Lake Corps land; allow anyone hunting small game or furbearers with a rifle larger than a .22 caliber in an area with an antelope season after September to not be required to have a valid antelope tag; make it unlawful to possess an American Alligator; require antelope and elk annual license holders to complete the 'Record of Game'; change bag limit on youth deer season to allow 2 deer, no more than 1 buck; add regulations for newly acquired property in Beaver County and make permanent the emergency rules for Cross Timbers WMA; expand bear hunting opportunities; increase hunting opportunity on several WMA's; revise regulations on transfer of landowner doe antelope permits; and revise requirements to enroll in the deer management assistance program.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 3. HUNTING ON CORPS OF ENGINEERS LANDS

800:25-3-2. Areas open to shotgun with pellets and bow and arrow only

The following Corps of Engineers areas are open to shotgun with pellets and bow and arrow only.

(1) Canton Lake: A 80-acre unit above State Highway 58A in the Sandy Cove Area.

(2) Keystone Lake:

(A) A 460-acre unit including land north and south of the Cowskin North Recreation Area.

(B) A 200-acre unit on the west side of the north end of the U.S. Highway 64 bridge.

(C) A 530-acre unit north of the New Mannford Ramp area.

(D) A 480-acre unit east of the Cimarron Park area.

(E) A 100-acre unit north and south of the Pawnee Cove Access Point.

~~(F) A 450-acre unit south and east of the town of Prue.~~

(~~G~~F) A 200-acre unit in the Old Mannford Ramp area.

(~~H~~G) A 280-acre unit on the south side of the road ending at Washington Irving North.

(~~I~~H) A 120-acre unit west and south of the Sinnett Cemetery and south of the old Keystone road.

(~~J~~I) A 200-acre unit south of Highway 51 on Bakers Branch.

(J) A 135 acre area on the west side of Walnut Creek (old Walnut Creek #3)

(3) Hugo Lake: except archery only during all deer seasons.

(A) A 2373-acre unit in the Kiamichi Park Area.

(B) A 418-acre unit in the Salt Creek Area.

(C) A 478-acre unit in the Wilson Point Area.

(D) A 481-acre unit in the Virgil Point Area.

(E) A 280-acre unit in the Sawyer Bluff Area.

(F) A 60-acre unit in the Rattan Landing Area.

(G) A 500-acre unit in the embankment area above Hugo Dam.

(4) Tenkiller Ferry Lake:

(A) A 110-acre unit north of the asphalt road and east of OK Highway 10A.

(B) A 310-acre unit south and east of OK highway 100.

(5) Copan Lake: except archery only during all deer seasons.

(A) A 650-acre unit below the dam.

(B) A 100-acre unit east and southeast of Copan Point Park.

(C) Three islands north of Washington Cove Park.

(6) Fort Gibson Lake:

(A) A 300-acre unit on the north side of North Bay.

(B) A 800-acre unit on the south side of the Chouteau Creek, starting at U.S. highway 69 and running east and south to State Highway 33.

(C) A 320-acre unit across the lake from the Chouteau Bend Recreation Area.

(D) A 480-acre unit on the west side of Mallard Bay.

(E) A 432-acre unit lying east of the Junction of Snug Harbor road and Whitehorn Cove road.

(F) A 424-acre unit in Section 13 of the Blue Bill Point housing addition.

(G) A 160-acre unit west of the town of Murphy.

(H) A 650-acre unit on Pryor Creek beginning on the east side of State Highway 69 in sections 29, 30 & 31.

(I) A 190-acre unit in the south $\frac{1}{2}$ of section 12, north of the Blue Bill Recreation Area.

(J) A 120-acre unit west of the town of Hulbert.

(7) Sardis:

(A) A 950-acre unit in the Potato Hills Area.

(B) A 100-acre unit in the Sardis Cove Area.

(8) Webbers Falls Lock and Dam:

(A) A 37-acre unit on the peninsula north of the lock and dam.

(B) A 150-acre unit in the Hopewell Park Area.

(C) A 50-acre unit in the Arrowhead Park Area, only open for hunting December I through February 28.

(D) A 150-acre unit in the Brewer's Bend Area, only open for hunting December 1 through February 28.

(E) A 50-acre unit south of the Spaniard Creek Area.

(F) A 60-acre unit off lock view access road and south of the project office.

(G) A 400-acre unit in the Three Forks Area.

(9) Lake Texoma:

(A) A 355-acre unit in the Burns Run Area.

(B) A 457-acre unit below Denison Dam.

(C) A 60-acre unit in the Willow Springs Area.

(D) A 100-acre unit on the north side of Alberta Creek.

(E) A 110-acre unit on the Limestone Creek Area.

(F) A 250-acre unit on the Treasure Island, North Island Group.

(G) A 500-acre unit southwest of McLaughlin Creek.

(H) A 110-acre unit in the Washita Point Area.

(I) A 1200-acre unit north of Newberry Creek.

(J) A 300-acre unit south of the Butcher Pen Area.

(K) A 800-acre unit on either side of highway 70 on the east side of the lake.

(L) A 1,000-acre unit in the Lakeside area.

(M) A 348-acre unit west of Platter.

(N) A 226-acre unit on the west side of Wilson Creek.

(10) Kaw Lake:

(A) A 280-acre unit in the Traders Bend Area.

(B) A 320-acre unit in the Sarge Creek Cove Area.

(C) A 220-acre unit in the Burbank Landing Area.

(D) A 110-acre unit between Sandy Park Swim Beach and Osage Cove.

(E) A 100-acre unit in the Bear Creek Cove, open for hunting only from 15 September through 15 February.

(11) Eufaula Lake: Open for archery 1 October through 28 February, open for shotgun with pellets from 1 November through 28 February.

(A) A 320-acre unit in the Brooken Cove Area.

(B) A 137-acre unit in the highway 31 Landing Area.
(C) A 98-acre unit in Holiday Cove Area.
(D) A 100-acre unit below the dam on the north side of the river.
(E) A 200-acre unit in the Juniper Creek Area.
(F) A 600-acre unit know as Duchess Creek Island, except restricted to shotgun with slugs only during deer gun season.
(G) A 500-acre unit in the Bunny Creek Area.
(H) A 400-acre unit in the Gentry Creek Area.
(I) A 400-acre unit in the Belle Starr North Area.

(12) Chouteau Lock and Dam (L&D 17): A 150-acre unit in the Tullahassee Loop Area.

(13) Hulah Lake:
(A) A 200-acre unit in the Turkey Creek Point Area.
(B) A 60-acre unit below Hulah Dam.
(C) A 375-acre unit in the Caney Bend Area.

(14) Wister Lake: A 400-acre unit east of the uncontrolled spillway and Glendale Dike.

(15) Oologah Lake:
(A) A 800-acre unit on the east side of Blue Creek Park.
(B) A 180 acre-unit on the south side of Spencer Creek Park.
(C) A 120-acre unit east of Double Creek Park.
(D) A 640-acre island, known as Goose Island, southeast of Sunnyside Ramp.

(16) Waurika Lake: All lands presently designated as open to public hunting, except fall turkey hunting is archery only. Spring turkey hunting is prohibited.

(17) Newt Graham Lock and Dam 18 (L&D 18) All lands presently designated as open to public hunting.

800:25-3-3. Areas open to archery only

The following areas are open to archery only:

(1) Birch Lake: A 450-acre unit in the Birch cove, Outlet Park and Twin cove areas.

(2) Kaw Lake:
(A) A 400-acre unit in the Washunga Bay Area.
(B) A 600-acre unit in the McFadden Cove Area and below the dam embankment access road.
(C) A 236-acre unit in the Osage cove Area open from December 1 to December 31.
(D) A 60-acre unit south of Kaw City and west of Pioneer Park.

(3) Fort Gibson:
(A) 515-acre unit on the south side of Mallard Bay.
(B) A 360-acre unit on the north side of the mouth of North Bay.
(C) A 50-acre unit south of Jackson Bay Area.
(D) A 150-acre area on the northeast end of Ranger Creek.
(E) A 488-acre unit on the south side of Whitehorn Cove Concession.
(F) A 150-acre unit in the NW 1/4 of Section 29, T18N, R19E.
(G) A 320-acre unit South of North Bay and North of Wagoner City Park.
(H) A 140-acre unit North of Long Bay and South of Wagoner City Park.
(I) A 70-acre area on the upper end of Pryor Creek adjacent to the east side of State Highway 69.
(J) A 36-acre area in Sec 6, T16N, R20E.
(K) A 77-acre area on the north shore of Ranger Creek.
(L) A 166-acre area west of Taylor Ferry South park in Sec 20 & 21, T17N, R19E.

(4) Copan Lake:
(A) A 50-acre unit north of Copan Point Park.
(B) A 50-acre unit north of the Post Oak area.
(C) A 5-acre unit west of Post Oak Park between the old and new Hwy 10.
(D) A 340-acre unit north of the Washington Cove Park.

(5) Heyburn Lake: A 120-acre unit on the south side of the Dam Site Area and west of the outlet channel.

(6) Skiatook Lake:
(A) A 138-acre unit in the Osage Park Area.
(B) A 150-acre unit area below Skiatook Dam.
(C) A 120-acre unit in Hominy Landing.

(7) Hulah Lake: A 40-acre unit south of the Hulah State Park office.

(8) Eufaula Lake: October 1 - February 28:
(A) A 150-acre unit in Gentry Creek.
(B) A 435-acre unit in the Belle Starr South Recreation Area from December 1 - February 28.

(9) Pine Creek Lake:
(A) A 200-acre unit north of Highway 3 and south of the old highway.
(B) A 120-acre unit west of Little River Park.

(10) Fort Supply: A 183-acre unit in the south portion of Fort Supply Park.

(11) Arcadia Conservation Education Area: (Open by ODWC sanctioned controlled hunt through the City of Edmond Game and Fish Commission only.)
(A) A 500-acre unit $\frac{1}{2}$ mile North of Memorial Road on Midwest Boulevard
(B) 230-acre unit at Douglas and 150th street.

(12) Keystone Lake: A 570 acre area south of the town of Prue (old Walnut Creek #1)

SUBCHAPTER 7. GENERAL HUNTING SEASONS

PART 1. GENERAL PROVISIONS

800:25-7-3. General provisions

(a) ~~Any person hunting any wildlife in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid deer, elk, bear or antelope license appropriate for that season unless otherwise~~

~~exempt.~~ Any person hunting any wildlife in open areas during the youth deer gun, bear muzzleloader, deer muzzleloader, deer gun, holiday antlerless deer gun (in open zones), elk gun (in open counties) or September antelope gun (in open areas) seasons with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber long rifle, must possess a valid bear, deer, elk, or antelope license, unless otherwise exempt. Any person hunting feral hogs in open areas during the deer gun, deer primitive, elk, bear or antelope season with a shotgun and rifled slug, or any rifle or handgun larger than a .22 caliber rimfire, must possess a filled or unfilled deer, elk, bear or antelope license appropriate for that season unless otherwise exempt.

(b) No person while in the field may possess or attempt to harvest any wildlife, except waterfowl and crane, with shotgun utilizing shot larger than conventional BB.

(c) Any person participating in primitive firearms season, deer gun seasons, elk season, antelope season and bear gun season must conspicuously wear both a head covering and an outer garment above the waistline, both totaling 500 square inches or more of clothing, both consisting of daylight fluorescent orange color totaling not less than 400 square inches [Title 29 O.S., Section 5-205, Part A]. All other hunters, except those hunting waterfowl, crow or crane, or while hunting furbearing animals at night must wear either a head covering or upper garment of fluorescent orange clothing during the deer primitive firearms season, deer gun seasons, elk season, antelope season and bear primitive firearms season, or bear gun season in areas where these season are open.

(d) For purposes of pheasant, turkey, deer, elk, bear and antelope regulations, "final destination" shall be the hunter's residence or place of consumption.

(e) No person may possess any game bird, animal or other wildlife, or portions thereof that have been taken by another person unless such game bird, animal or other wildlife, contain information giving the taker's name, address, license number, date taken and the number and kind of game bird, animal or wildlife. In addition, information on deer, elk, antelope, bear and turkey must include where game was checked or electronic check station confirmation number as proof that the animal has been checked. The person's name and address receiving said wildlife must also appear on the written information.

(f) No person shall concentrate, drive, molest, hunt, take, capture or kill; or attempt to take any wildlife by the aid of any fire or smoke whether man-made or natural.

(g) No person may hunt, chase, capture, shoot at, wound or kill any moose or Rocky Mountain bighorn sheep, except as otherwise provided by statute or Commission rule.

(h) Private landowner regulations regarding any items covered by these rules may be more restrictive, but not less restrictive than these rules.

(i) Dogs may be used in taking all game species in these rules except bear, deer, elk, antelope and turkey.

(j) Except as otherwise provided for by law or Commission rule, nothing shall prohibit the year round pursuit of game, which may be lawfully hunted with the use of hunting dogs, for dog training or sport only. However unless otherwise provided, no person in pursuit of game with hunting dogs outside of the regular harvest season shall have in their possession the means to harvest such game.

(k) The pursuit of feral hogs with a shotgun on private property is not restricted by shot size.

PART 3. REPTILES AND AMPHIBIANS

800:25-7-7. General provisions

The following are the general provisions for the taking and possession of reptiles and amphibians:

(1) It shall be unlawful to engage in any commercial activities involving any species or subspecies, if more than one exists, of reptiles or amphibians collected from the wild that are indigenous to or whose range extends into the State of Oklahoma, except for provisions for rattlesnakes, water turtles and aquatic salamanders (*Necturus* and *Ambystoma*, except *Ambystoma talpodium*).

(2) Any person while in the act of taking or attempting to take reptiles and amphibians or possessing reptiles or amphibians must first possess:

(A) A resident or nonresident hunting license, unless otherwise exempt, for land dwelling reptiles or amphibians, with the exception of (C) and (D) of this paragraph.

(B) A resident or nonresident fishing license, unless otherwise exempt, for water dwelling reptiles or amphibians, with the exception of (C) and (D) of this paragraph.

(C) A commercial turtle harvester license for legal water dwelling turtles if the taking or possession is for commercial purposes.

(D) A commercial resident or nonresident minnow dealers license for legal aquatic salamanders if the taking is for commercial purposes.

(E) The appropriate license required for the taking of bullfrogs according to current statutes and regulations.

(3) Persons possessing a current resident or nonresident hunting license, unless otherwise exempt, may sell lawfully taken rattlesnakes only to those individuals holding a Commercial or Noncommercial Wildlife Breeders license during open season. A Commercial Breeders license is required of all who buy and resell live rattlesnakes.

(4) The method of taking legal water turtles and aquatic salamanders for commercial purposes and the taking of bullfrogs shall be restricted to provisions in the current statutes and regulations. It shall be unlawful to introduce, deposit, place or drain any deleterious, noxious, toxic or petroleum based substance into or around any underground dens or rock crevices for the purpose of taking reptiles or amphibians. With the exception of water turtles and aquatic salamanders taken for commercial purposes and all legal species of frogs, all other reptiles and amphibians may only be taken by hand or any other legal means.

(5) Nothing in this Part shall prohibit the control of reptiles other than those listed as endangered or threatened, by

landowners, lessees, or occupants of such land when such reptiles are creating a nuisance.

(6) All persons so licensed for reptiles and amphibians shall keep detailed breeding and hatching records in addition to those records already required by law.

(7) Progeny of lawfully held reptiles may, for six months from date of birth, be held in captivity in excess of the stated limits. Before or upon reaching six months of age, such progeny must be disposed of according to the requirements of the license held, or as directed by the Department. Progeny may be retained for brood stock if replacing parent stock disposed of in the above manner so as not to exceed the stated limits.

(8) It is unlawful to possess an American Alligator without appropriate permit from the Department.

(~~8~~9) The Director may make exception for education or research purposes to holder of Oklahoma Scientific Collector's permits for both reptiles and amphibians.

PART 12. ANTELOPE

800:25-7-48. Dates, open areas, bag limits and hunting hours and regulations

The following dates, open areas, bag limits, hunting hours and regulations apply to archery antelope season:

(1) **Dates.** Hunting dates will be established annually and published in the current Oklahoma Hunting Guide.

(2) **Open Areas.** The archery antelope season is open in Cimarron County and that portion of Texas County west of Highway 136.

(3) **Bag limit.** The archery bag limit is two antelope, which may include no more than one buck. The archery antelope is not bonus and counts against the statewide bag limit for antelope.

(4) **Hunting hours.** The hunting hours are the same as those established for deer archery season.

(5) **Tagging and Checking.** The following applies to the tagging and checking of antelope:

(A) Persons taking an antelope shall securely attach their name and license number immediately to the carcass.

(B) All antelope must be checked as described in the Oklahoma Hunting Guide.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. Antelope tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Any antelope or any portion of any antelope transferred to another person must have the hunter's name, address, hunting license number and date harvested attached to the animal. The person's name and address receiving said wildlife must also appear on the written information.

(E) Upon harvesting an antelope all annual license/permit holders will be required to complete the "Record of Game" Section on the back of the license form.

(6) **Legal Means of Take:** Same as for deer archery season. Hunter fluorescent clothing requirements are the same as those required for the deer archery season.

PART 13. DEER

800:25-7-55. Deer-Youth Gun Season

(a) **Age Requirements.** All youth under 18 years of age and eligible to purchase an antlerless or antlered youth deer gun permit. All participants, while hunting, are required to be accompanied by an adult, 18 years or older. The adult shall not hunt, except that the adult may archery hunt with valid licenses while accompanying the youth hunter. The adult hunter accompanying the youth hunter shall not possess any rifle, shotgun, or pistol.

(b) **Dates.** The dates for the youth season shall be a Friday, Saturday, and Sunday as published in the current Oklahoma Hunting Guide and Regulations.

(c) **Open Areas.** The season is open statewide. Wildlife Management Areas will be open as published in the current Oklahoma Hunting Guide.

(d) **Bag Limit.** ~~One (1) antlerless deer and one (1) antlered deer.~~ Two (2) deer, which may include no more than one (1) antlered deer. An unfilled antlerless or antlered youth deer gun permit shall be valid during the regular deer gun season in designated zones.

(e) **Legal means of taking.** All rifles (conventional or muzzleloader), handguns, shotguns or bows legal during the deer gun season shall also be legal during the youth deer season.

PART 14. ELK

800:25-7-57. Dates, open areas, bag limit and hunting hours

The following dates, open areas, bag limit and hunting hours apply to elk hunting:

(1) **Dates.** Hunting dates will be established by the Oklahoma Wildlife Conservation Commission and will be published in the Oklahoma Hunting Guide.

(2) **Open areas.** The season is open only on private land in Caddo, Comanche and Kiowa counties in southwest Oklahoma (West Zone) and Adair, Cherokee, Delaware, Mayes, Muskogee and Sequoyah counties in northeast Oklahoma (East Zone).

(3) **Bag limit.** The bag limit, antler restriction and sex restrictions will be established by the Oklahoma Wildlife Conservation Commission. All such restrictions and bag limits will be published in the Oklahoma Hunting Guide.

(4) **Hunting hours.** The hunting hours are the same as those established for the deer gun season.

(5) **Tagging and checking.** The following provisions apply to the tagging and checking of elk:

(A) Persons taking an elk shall securely attach their name, license number, current date and time of harvest immediately to the carcass.

(B) All elk must be checked in at a hunter check station, or with an authorized Department employee, or online at **www.wildlifedepartment.com** no later than 24 hours upon leaving the hunt area. Once checked, the elk will be issued a carcass tag or an online confirmation number. This tag or confirmation number must remain with the carcass to its final destination or through processing and/or storage at commercial processing or storage facilities. Carcass may be checked in quartered with sex organs still naturally attached and head accompanying the carcass.

(C) Evidence of sex (head) must not be removed from the carcass until the carcass has been checked. However, carcasses may be checked in quartered with the sex organs naturally attached and head accompanying the carcass. Elk tags must remain with the carcass through processing and/or storage at commercial processing or storage facilities.

(D) Upon harvesting an elk all annual license/permit holders will be required to complete the 'Record of Game' Section on the back of the license form.

PART 16. BLACK BEARS

800:25-7-67. Dates, open areas, bag limits, hunting hours, legal means of take, quotas, prohibited activities

The following dates, open areas, bag limits, hunting hours, legal means of take, quotas, and prohibited activities apply to bear seasons:

(1) **Dates.** The dates for bear archery season shall be October 1 through the ~~Friday before deer muzzleloader season.~~ third Sunday in October. The dates for bear muzzleloader season shall run concurrently with deer muzzleloader season.

(2) **Open areas.** The counties open to bear hunting are Latimer, LeFlore, McCurtain, and Pushmataha.

(3) **Bag limit.** The bag limit is one bear, regardless of seasons hunted.

(4) **Hunting hours.** The hunting hours shall be one-half hour before sunrise to one-half hour after sunset.

(5) **Legal means of taking.** Bear may be taken with archery equipment or muzzleloading firearms described as legal for deer for the respective season.

(6) **Tagging and checking.** The following provisions apply to the tagging and checking of bears:

(A) Persons taking a bear shall securely attach their name and license number immediately to the carcass and fill out the record of harvest.

(B) All bears must be checked as described in the Oklahoma Hunting Guide.

(C) Evidence of sex must not be removed from the carcass until the bear has been checked by ODWC personnel. However, carcass may be checked in quartered with sex organs naturally attached and head accompanying the carcass. Bear carcass tags must remain with the carcass through the processing and storage process.

(7) **Quotas.** Quotas will be set by the Wildlife Conservation Commission as needed and listed in the Oklahoma Hunting Guide. When the quota is met, the hunt for that year is closed. Harvest totals must be checked each day either on-line or by phone to make sure the quota has not been met before hunting bear.

(8) **Prohibited activities.**

(A) No baiting allowed on Wildlife Management Areas.

(B) Shooting females with cubs is prohibited.

(C) No den shooting of bears.

(D) Shooting cubs is prohibited.

PART 19. SEASONS ON AREAS OWNED OR MANAGED BY THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION AND THE U.S. FISH AND WILDLIFE SERVICE

800:25-7-83.1. Beaver River WMA - McFarland Unit

The following hunting and trapping seasons apply to the McFarland Unit on Beaver River WMA:

(1) Quail: Controlled Hunts Only.

(2) Pheasant: Controlled Hunts Only.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates except closed during the first nine days of deer gun season, either-sex.

(B) Gun: Same as statewide season dates, 1 bird either sex and shotgun only.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit, hunting hours close 1 hour before official sunset.

(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates, except closed during first nine days of deer gun season.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates, except closed during first nine days of deer gun season.

(14) Deer - primitive: Controlled Hunts Only.

(15) Deer - gun: Controlled Hunts Only.

(16) Trapping: Open to water sets and live box traps only.

(17) Pursuit with hounds: Closed season.

(18) Predator/furbearer calling: Same as statewide dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed during deer gun season.

800:25-7-90. Cherokee PHA

The following hunting and trapping seasons apply to the Cherokee PHA:

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through ~~the first nine days of~~ deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates, 1 tom limit on the PHA and GMA combined.
(6) Squirrel: Same as statewide season dates, except closed from opening day of archery season through ~~first nine days of~~ deer gun season.
(7) Rabbit: Same as statewide dates, except closed from opening day of archery season through ~~first nine days~~ deer gun season.
(8) Crow: Same as statewide season dates except closed from opening day of archery season through ~~first nine days of~~ deer gun season.
(9) Dove: Same as statewide season dates except closed from opening day of archery season through ~~first nine days of~~ deer gun season.
(10) Rail and gallinule: Same as statewide dates except closed from opening day of archery season through ~~first nine days of~~ deer gun season.
(11) Common snipe: Same as statewide dates, except closed from the opening day of deer archery season through the ~~first nine days of~~ deer gun season.
(12) Woodcock: Same as statewide dates, except closed from the opening day of deer archery season through the ~~first nine days of~~ deer gun season.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: Same as statewide season dates, except open to antlerless hunting the first and second weekends only.
(15) Deer-gun: Same as statewide dates, except closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates, except closed during ~~first nine days of~~ deer gun season.
(17) Pursuit with hounds: Same as statewide dates, except closed from opening day of archery season through ~~first nine days~~ of deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from opening day of archery season through ~~first nine days of~~ deer gun season and spring turkey season.
(19) Waterfowl: Same as statewide season dates, except closed from opening day of archery season through ~~first nine days of~~ deer gun season.

800:25-7-91. Cherokee GMA

The following hunting and trapping seasons apply to the Cherokee GMA: ~~Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.~~

(1) Quail: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: ~~Open Saturday through Friday prior to statewide primitive season and the Monday following the close of deer gun season through January 15.~~Same as statewide season dates, except closed from the opening day of deer primitive firearms season through deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: ~~Open to special hunt permittees. Permits will be issued by drawing, except the last 14 days of the statewide season will be open to the general public, 1 tom limit.~~Same as statewide season dates, one (1) tom limit on the PHA and GMA combined.
(6) Squirrel: ~~Open August 1 through August 31 and January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(7) Rabbit: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(8) Crow: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(9) Dove: ~~Closed season.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: ~~Closed season.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(12) Woodcock: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(13) Deer - archery: ~~Open Saturday through Friday prior to statewide primitive season and the Monday~~

~~following the close of deer gun season through January 15.~~Same as statewide season dates, except closed from the opening day of deer primitive firearms season through deer gun season.

(14) Deer - primitive firearms: Controlled hunts only.

(15) Deer - gun: controlled hunts only.

(16) Trapping: ~~Open the first day of the statewide season that follows the deer gun season through January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

(17) Pursuit with hounds: ~~Open the first day of the statewide season that follows the deer gun season through January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.

(18) Predator/furbearer calling: ~~Open the first day of the statewide season that follows the deer gun season, through January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season and spring turkey season.

(19) Waterfowl: ~~Open January 1 through January 31, except when statewide season closes prior to January 31.~~Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-94. Copan WMA

The following hunting and trapping seasons apply to the Copan WMA:

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, one bird either sex limit.

(B) Gun: Same as statewide season dates, one tom limit.

(5) Turkey - Spring: Same as statewide season dates, 1 tom limit.

(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.

(8) Crow: Same as statewide season dates.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates.

(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.

(13) Deer - archery: Same as statewide season dates.

(14) Deer - primitive firearms: Same as statewide season dates.

(15) Deer - gun: Same as statewide season dates, except closed the last seven days and closed to antlerless deer hunting.

(16) Trapping: Same as statewide season dates.

(17) Pursuit with hounds: Same as statewide season dates, except closed ~~from opening day of archery season through~~ during the first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~

(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.

(19) Waterfowl: Same as statewide season dates.

800:25-7-94.1.1. Cross Timbers WMA

The following hunting and trapping seasons apply to the Cross Timbers WMA:

(1) Quail: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

(2) Pheasant: Closed season.

(3) Prairie chicken: Closed season.

(4) Turkey - Fall:

(A) Archery: Same as statewide season dates, except closed the first nine (9) days of deer gun season, either-sex.

(B) Gun: Closed season.

(5) Turkey - Spring: Controlled Hunts only.

(6) Squirrel: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

(7) Rabbit: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

(8) Crow: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun seasons.

(9) Dove: Same as statewide season dates.

(10) Rail and gallinule: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

(11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.

(12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery through the first nine (9) days of deer gun season.

(13) Deer-archery: Same as statewide season dates, except closed the first nine (9) days of deer gun season.

(14) Deer - primitive: Controlled hunts only.

(15) Deer - gun: Controlled hunts only.

(16) Trapping: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season, water sets and live box traps only.

(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

(18) Predator/furbearer calling: Same as statewide seasons dates, except closed from opening day of archery through the first nine (9) days of deer gun season.

(19) Waterfowl: Same as statewide season dates, except closed from opening day of deer archery through the first nine (9) days of deer gun season.

800:25-7-111. Hulah WMA

The following hunting and trapping seasons apply to the Hulah WMA:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, one (1) tom limit.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide dates except closed ~~from opening day of archery season through~~ during the first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~
(18) Predator/furbearer calling: Same as statewide season dates, except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-126. Mountain Park WMA

The following hunting and trapping seasons apply to the Mountain Park WMA: Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey-Fall:
(A) Archery: Same as statewide season dates.
(B) Gun: Closed season.
(5) Turkey-Spring: Same as statewide season dates. 1 tom limit.
(6) Squirrel: Same as statewide season dates.
(7) Rabbit: Same as statewide season dates.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates.
(12) Woodcock: Same as statewide season dates.
(13) Deer-archery: Same as statewide season dates.
(14) Deer-primitive firearms: ~~Closed season.~~Same as statewide season dates.
(15) Deer-gun: Closed season.
(16) Trapping: Open to water sets and live box traps only.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed during first nine days of deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-131.1. Osage WMA - Rock Creek Unit

The following hunting and trapping seasons apply to the Osage WMA Rock Creek Unit:

(1) Quail: Same as statewide season dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, either-sex.
(B) Gun: Same as statewide season dates, one (1) tom limit.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed during first nine days deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide season dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates, except closed the last seven days of deer gun season and closed to antlerless deer hunting.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide season dates except closed ~~from opening day of archery season through~~ during the first nine days of deer gun season. ~~In addition, closed during spring turkey season.~~

(18) Predator/furbearer calling: Same as statewide season dates except closed during deer gun season.
(19) Waterfowl: Same as statewide season dates.

800:25-7-131.2. Osage WMA - Western Wall Unit

The following hunting and trapping seasons apply to the Osage WMA Western Wall Unit. Unless otherwise provided, firearms are restricted to rimfire ammunition or shotguns with pellets.

(1) Quail: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: Same as statewide season dates, except closed from the opening day of deer primitive season through the first nine (9) days of deer gun season.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as statewide season dates, one (1) tom limit.
(6) Squirrel: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(7) Rabbit: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(8) Crow: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(9) Dove: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(10) Rail and gallinule: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(11) Common snipe: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(12) Woodcock: Same as statewide season dates, except closed from the opening day of deer archery season through the first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates, except closed from the opening day of deer primitive season through the first nine (9) days of deer gun season.
(14) Deer - primitive firearms: Controlled hunts only.
(15) Deer - gun: Controlled hunts only.
(16) Trapping: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(17) Pursuit with hounds: Same as statewide season dates, except closed from opening day of deer archery season through deer gun season and spring turkey season.
(18) Predator/furbearer calling: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.
(19) Waterfowl: Same as statewide season dates, except closed from the opening day of deer archery season through deer gun season.

800:25-7-149.1. Three Rivers WMA

The following hunting and trapping seasons apply to the Three Rivers WMA:

(1) Quail: Same as statewide dates, except closed during first nine days of deer gun season.
(2) Pheasant: Closed season.
(3) Prairie chicken: Closed season.
(4) Turkey - Fall:
(A) Archery: ~~Same as Southeast season dates. Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.~~Same as statewide season dates; either-sex.
(B) Gun: Closed season.
(5) Turkey - Spring: Same as Southeast ~~statewide~~ season dates. ~~Two tom limit.~~Bag limit will be determined annually and published in the current Oklahoma Hunting Guide.
(6) Squirrel: Same as statewide dates, except closed during first nine days of deer gun season.
(7) Rabbit: Same as statewide dates, except closed during first nine days of deer gun season.
(8) Crow: Same as statewide season dates.
(9) Dove: Same as statewide season dates.
(10) Rail and gallinule: Same as statewide season dates.
(11) Common snipe: Same as statewide dates, except closed during first nine days of deer gun season.
(12) Woodcock: Same as statewide dates, except closed during first nine days of deer gun season.
(13) Deer - archery: Same as statewide season dates.
(14) Deer - primitive firearms: Same as statewide season dates.
(15) Deer - gun: Same as statewide season dates.
(16) Trapping: Same as statewide season dates.
(17) Pursuit with hounds: Same as statewide season dates, except closed during first nine days of deer gun season.
(18) Predator/furbearer calling: Same as statewide season dates.
(19) Waterfowl: Same as statewide season dates, except closed during first nine days of deer gun season.

SUBCHAPTER 9. CONTROLLED HUNTS

PART 3. ANTELOPE

800:25-9-11. Cimarron and Texas County (west of Highway 136) landowner antelope permits

(a) Minimum acreage per application shall be 160 acres and must be located in Cimarron and/or Texas County (west of Highway 136). Properties may not be split to increase number

of entries. There shall be a maximum of 4 applications per property allowed in the either sex drawing.

(b) Application may only be filled out and submitted by the owners or operators of the lands contained within the application. Claimants of "hunting leases" do not qualify as either owners or operators. Applicants qualifying for drawing are owner, spouse and children, and/or operator (agriculture lessee) spouse and children. General farm and ranch employees do not qualify as operators.

(c) Federal lands (Rita Blanca) are excluded from application.

(d) Landowner either sex permits are valid only on the lands submitted on the application for the September season. However, any unfilled permit automatically becomes valid for a doe for the December and January doe season in the appropriate county, with written landowner permission. Landowner doe-only permits are county specific but are valid in the open area within that county with written landowner permission.

(e) Landowner permits are transferable one time only. If a landowner chooses to transfer the permit, it must be transferred no later than 14 days prior to the opening date of ~~the September~~ each appropriate season. Upon transfer, the landowner must mail transfer information to Oklahoma Department of Wildlife Conservation. Transfer information must include the hunters' name, hunting license number, mailing address, telephone number and additional fees if applicable.

(f) Landowner permits are not once in a lifetime.

SUBCHAPTER 29. OKLAHOMA DEER MANAGEMENT ASSISTANCE PROGRAM

800:25-29-3. Landowner responsibilities

The following are the responsibilities of landowners participating in the Deer Management Assistance Program (DMAP):

(1) **Enrollment fees.** An annual enrollment fee payable at time of application is required. Permits are not transferable and may be used only on the specific area for which they are issued. An antlerless tag is required in addition to the permit. Annual enrollment fees shall be based on the acreage of the property enrolled. Two different levels will be available as follows:

(A) Level 1: 1,000 - 4,999 acres, $200.00 enrollment fee.

(B) Level 2: 5,000+ acres, $400.00 enrollment fee.

(2) **Tagging.** DMAP permits will consist of readily identifiable, colored tag stock. Upon harvesting an antlerless deer on lands enrolled in the DMAP program, the permit and antlerless deer tag will be immediately attached to the animal. Antlerless deer harvested using DMAP permits will be bonus deer and will not be a part of the regular season bag limit. Unused permits will be returned to the supervising biologist immediately following the close of all legal deer seasons. No rebate or refund for unused tags or permits will be made.

(3) ~~**Checking.** Each DMAP cooperator will be responsible for keeping accurate records of all deer harvested on designated DMAP lands. Cooperators must collect biological data on all harvested deer as may be required by the department. Special forms and detailed instructions will be provided for that purpose. Cooperator records must be submitted to the local biologist immediately following the close of all legal deer seasons. Failure to provide proper records, lack of cooperation, or other non-compliance may result in cancellation of the program on those lands involved.~~**Record keeping:** Each DMAP cooperating property will be responsible for the following annual requirements:

(A) Renewal application and full payment must be received by July 31.

(B) Cooperator must complete a standardized spotlight route according to supplied instructions. The count must consist of 10 repetitions and be mailed to the property's cooperating biologist by October 1.

(C) Each deer taken from cooperating property must be properly recorded in the supplied deer harvest record book according to provided instructions. Antler beam measurements must be recorded for all antlered deer checked.

(D) Cooperators must remove one side of lower mandible from each deer taken, regardless of sex, properly tag and store mandibles according to supplied instructions until delivery to cooperating biologist.

(E) Cooperator must deliver the deer harvest record book and all mandibles to cooperating biologist prior to January 31.

(F) Cooperators failing to comply with any of these requirements will receive a written warning detailing what requirement was not met. Any additional lapses in compliance will result in termination from the program. Individuals, groups, or properties once terminated will not be allowed to re-apply.

(4) **Harvest recommendations**: DMAP cooperators must make good faith efforts to comply with the harvest recommendations provided by the cooperating biologist. Each enrolled property's harvest will be evaluated annually by the cooperating biologist and compared to the harvest recommendations. Programs failing to comply with harvest recommendations will receive a written warning. Cooperators failing to follow harvest recommendations in subsequent years may be terminated from the program.

(5) **Wildlife Violations**: Any Title 29 or Title 800 rule violation occurring on a cooperating property resulting in a written citation or administrative fine being issued may result in immediate termination of the property's involvement in the DMAP program.

800:25-29-4. Department responsibilities

The following are the responsibilities of the Department to the landowners participating in the Deer Management Assistance Program (DMAP):

(1) The Department will provide each cooperator with the materials necessary to maintain accurate records (data forms, scales, jaw puller, permits, etc.).

(2) Harvest results will be compiled from cooperator records and ~~a written report~~ will be furnished to the cooperator. ~~by March 15. Recommendations for future deer harvest and management will be made in the report.~~

(3) The Department will annually evaluate the participation of each cooperator to determine eligibility for continued participation in DMAP. Noncompliant properties will be dealt with according to 800:25-29-3 (3).

[OAR Docket #12-705; filed 5-23-12]

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

[OAR Docket #12-706]

RULEMAKING ACTION:
Permanent final adoption
RULES:
Subchapter 1. Use of Department Managed Lands
800:30-1-2. Use restrictions [AMENDED]
800:30-1-4. Camping [AMENDED]
800:30-1-5. Vehicles [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]
800:30-1-21. Baiting on Wildlife Management Areas [NEW]
AUTHORITY:
Title 29 O.S., Sections 3-103 and 5-401 Article XXVI, Sections 1 and 3 of the constitution of Oklahoma; Department of Wildlife Conservation Commission
DATES:
Comment period:
December 1, 2011- January 13, 2012
Public Hearings:
Date: January 10, 2012
Time: 7:00 p.m.
Oklahoma City - OK Department of Wildlife Conservation Auditorium, 1801 N. Lincoln Blvd.
Poteau - Kiamichi Vo-Tech Center, 1509 South McKenna
Adoption:
March 5, 2012
Submitted to Governor:
March 9, 2012
Submitted to House:
March 9, 2012
Submitted to Senate:
March 9, 2012
Gubernatorial approval:
April 13, 2012
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 8, 2012.
Final Adoption:
May 8, 2012
Effective:
July 1, 2012
Gubernatorial approval:
July 13, 2011
Register Publication:
28 Ok Reg 2365
Docket number:
11-973
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 1. Use of Department Managed Lands
800:30-1-4. Camping [AMENDED]
800:30-1-20. Restricted public use areas [AMENDED]
INCORPORATED BY REFERENCE:
n/a

ANALYSIS:
These rules willestablish rules on camping and non-hunter use of the Cross Timbers WMA, increase opportunities on Vann's Lake Refuge, make the ORV rules consistent on Honobia Creek WMA with other WMA's, and make it unlawful to bait wildlife on Wildlife Management Areas.
CONTACT PERSON:
Alan Peoples, Chief of Wildlife Division, Oklahoma Department of Wildlife Conservation, 1801 N. Lincoln Blvd., Oklahoma City, Ok 73105. Phone: 405/521-2739 or Rhonda Hurst, APA Liaison, phone: 405/522-6279.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2012:

SUBCHAPTER 1. USE OF DEPARTMENT MANAGED LANDS

800:30-1-2. Use restrictions

The following restrictions apply to Oklahoma Department of Wildlife managed lands:

(1) **Wildlife Management Areas.** All lands owned, licensed, leased or under the management of the Wildlife Division of the Oklahoma Department of Wildlife Conservation, except for the McCurtain County Wilderness Area, are designated Wildlife Management Areas (WMA) to accurately reflect the overall objectives for these lands and the results of management activities conducted thereon. Depending on the specific management objectives, all or parts of any particular wildlife management area may also be designated as a public hunting area, game management area or migratory bird refuge, or wetland development unit.

(2) **Public Hunting Areas.** On a Public Hunting Area (PHA portion), all legal forms of wildlife harvest are permitted under statewide hunting, fishing and furbearer regulations unless specific regulations for the area indicate otherwise.

(3) **Game Management Areas.** A Game Management Area (GMA portion) is closed to all wildlife harvest, except as specifically permitted by Commission action.

(4) **Migratory Bird Refuges.** A designated Migratory Bird Refuge or Waterfowl Refuge Portion (WRP) is closed to all public use and access during the period of October 15 - January 31, except as specifically permitted by Commission action or special hunt permittee's on days of their hunt unless specifically noted otherwise. In addition, unless otherwise provided, all shotgun hunting is restricted to federally approved nontoxic shot and the possession of lead shot is prohibited.

(5) **Wetland Development Units.** Areas designated as Wetland Development Units (WDU) are open for hunting as published annually in the Oklahoma Waterfowl Regulations booklet or the Oklahoma Hunting Regulations booklet. Shooting hours for waterfowl are $\frac{1}{2}$ hour before official sunrise until 1 p.m. daily. Unless otherwise provided, all shotgun hunting is restricted to federally

approved nontoxic shot and the possession of lead shot is prohibited.

(6) **Wilderness Area.** On the Wilderness Area, there shall be no public entry except by persons possessing prior written permission from the Director of the Department of Wildlife Conservation or his designated representatives; Department employees; or by the Oklahoma Board of Agriculture, Division of Forestry personnel engaged in fire protection or suppression activities. The self-guided nature trail on the McCurtain County Wilderness Area does not fall under these restrictions.

(7) **Closed areas.** Closed areas within larger management units may not be open to specific types of hunting or other activities on a year-round basis. Other uses may be permissible according to the above priorities insofar as they do not conflict with the specific objectives assigned to these closed areas. Those areas are:

(A) An 80-acre portion of Canton WMA described as N/2 NE/4 of Section 3, T19N, R14W; Dewey County. Prairie Dog Refuge -closed to prairie dog hunting.

(B) All recreation areas located on National Forest lands including Cedar Lake, Billy Creek and Winding Stair in the Ouachita WMA, Kulli and Bokohoma in the Ouachita WMA, Skipout, Spring Creek and Dead Indian in Black Kettle WMA are closed to hunting.

(C) That portion of the Corps of Engineer's Lock and Dam 17 (Chouteau) project under license to the Oklahoma Department of Wildlife Conservation in Sections 4, 9, and 10, T16N, R18E, Wagoner County; all licensed lands lying south and west of the center of the Navigation Channel, as described by the Corps of Engineer's, and north of the paved road leading to Lock and Dam 17 are closed to all ~~hunting and~~ public access (Vann's Lake Refuge)~~. Except~~, except for special hunt permittees on the days of their hunt.~~and non-hunting public use that is permitted year-round on the Jean Pierre Chouteau Hiking Trail and the Vann's Lake Marsh Trail. Fishing is permitted west of new Highway 69 between June 1 and February 1 and east of old Hwy 69 year-round.~~ Public access for wildlife viewing is allowed from old Hwy 69 road pavement and bridge as signed. Lands lying west of new Hwy 69 are open for hunting, fishing, and non hunting public use from February 1 to October 14, and lands lying east of old Hwy 69, are only open to fishing and non-hunting public use from February 1 to October 14. It shall be further unlawful to enter the "Vann's Lake Refuge" ~~at any time~~ with a firearm, except for special hunt permittee's on the days of their hunt and during designated hunting periods and locations described above.

(D) A parcel described at Lots 9-10-12-13 and the SW/4 of the SW/4 of Section 6 T26N, R8W, Grant County known as the Van Osdol Wildlife Management Area.

(E) The following described lands at Robbers Cave Wildlife Management Area are closed to all hunting: That portion of Sections 18 and 19 lying west of Coon Creek Road and the Northeast quarter and the North half of the Southeast quarter of Section 25.

(8) **Conservation Education Area.** The primary purpose of the conservation education area is conservation education. All activities are strictly regulated by ODWC.

800:30-1-4. Camping

(a) Camping is limited to a maximum of 14 days, except at areas open only to hunter camping for special season(s). Camping on these areas is limited to 2 days longer than the period which the camper (hunter) is authorized to hunt.

(b) Quiet shall be maintained in all camping areas between the hours of 11:00 p.m. and 7:00 a.m. Excessive noise during such times which unreasonably disturbs persons is prohibited.

(c) All dogs or other pets must be kept on a leash or otherwise confined while in a camping area.

(d) No overnight camping is permitted at the following areas unless otherwise authorized by the Department:

(1) Altus-Lugert WMA.
(2) Arcadia Conservation Education Area - Any authorized camping must have education or conservation purpose.
(3) Broken Bow WMA.
(4) Canton WMA (waterfowl refuge portion).
(5) Cherokee (GMA portion).
(6) Dewey County WMA.
(7) Drummond Flats WMA.
(8) Eufaula WMA
(9) Fort Gibson WMA.
(10) Gist WMA.
(11) Grady County WMA
(12) Grassy Slough WMA.
(13) Hackberry Flat (waterfowl refuge portion).
(14) Hugo WMA (waterfowl refuge portion).
(15) Major County Lands.
(16) McClellan-Kerr WMA (includes waterfowl refuge portion).
(17) McCurtain County Wilderness.
(18) Okmulgee WMA (GMA portion).
(19) Osage WMA (Western Wall Unit).
(20) Ozark Plateau WMA.
(21) Red Slough WMA.
(22) Sparrow Hawk WMA.
(23) Tenkiller WMA.
(24) Van Osdol WMA.
(25) Washita County WMA.
(26) Whitegrass Flats WMA.
(27) Wister WMA (waterfowl refuge portion).

(e) Hunter and fishermen camping is permitted only in designated camping areas at:

(1) Atoka WMA (includes PHA portion).
(2) Beaver River WMA.
(3) Canton WMA (except waterfowl refuge portion).
(4) Cherokee WMA (PHA portion).
(5) Chickasaw NRA (Arbuckle).
(6) Cimarron Bluff WMA.
(7) Cimarron Hills WMA

(8) Cooper WMA.
(9) Copan WMA.
(10) Cross Timbers WMA
(~~10~~11) Ellis County WMA.
(~~11~~12) Fobb Bottom WMA.
(~~12~~13) Fort Cobb WMA.
(~~13~~14) Fort Supply WMA.
(~~14~~15) Hackberry Flat WMA (except waterfowl refuge portion).
(~~15~~16) Heyburn WMA .
(~~16~~17) Hickory Creek WMA.
(~~17~~18) Hugo WMA (except waterfowl refuge portion).
(~~18~~19) Hulah WMA.
(~~19~~20) James Collins WMA.
(~~20~~21) Kaw WMA.
(~~21~~22) Lexington WMA.
(~~22~~23) Mountain Park WMA.
(~~23~~24) Okmulgee WMA (PHA portion, i.e., the area north and east of the Deep Fork River).
(~~24~~25) Oologah WMA
(~~25~~26) Optima WMA.
(~~26~~27) Osage WMA (Rock Creek Unit).
(~~27~~28) Pushmataha WMA.
(~~28~~29) Sandy Sanders WMA.
(~~29~~30) Stringtown WMA
(~~30~~31) Schultz WMA.
(~~31~~32) Skiatook WMA.
(~~32~~33) Texoma-Washita Arm WMA.
(~~33~~34) Tishomingo WMU.
(~~34~~35) Waurika WMA.
(~~35~~36) Yourman WMA.

(f) Hunter camping is permitted only in designated camping areas and only during specified hunting seasons at:
(1) Cookson Hills WMA, only during open hunting seasons on the area.
(2) Ouachita WMA (Homer L. Johnston portion), only during deer and turkey seasons.
(3) John Dahl WMA, only during hunting seasons.
(4) Packsaddle WMA, only during open hunting seasons.
(5) Robbers Cave WMA, only during open deer and turkey seasons.
(6) Spavinaw Hills WMA, only during open hunting seasons on the area.

(g) Hunter and fishermen camping is permitted only within 50 yards of roads designated as open for public use at:
(1) Deep Fork WMA.
(2) Gary Sherrer WMA, only during open hunting seasons on the area.
(3) Keystone WMA.
(4) Love Valley WMA.
(5) Pine Creek WMA.
(6) Wister WMA, (except waterfowl refuge portion).

(h) Camping is permitted in accordance with U.S. Forest Service regulations at:
(1) Ouachita WMA - Le Flore Unit (Ouachita National Forest), except Homer L. Johnston Unit.
(3) Black Kettle WMA (Cibola National Forest) - Black Kettle National Grasslands.
(4) Rita Blanca WMA (Cibola National Forest) - Rita Blanca National Grasslands.

(i) Camping is permitted in designated camping areas only at McGee Creek WMA.

800:30-1-5. Vehicles

(a) Except as otherwise provided, all motorized vehicles are required to stay on roads designated as open for public or hunter use. There are no exceptions for motorcycles, four-wheel drive vehicles, snowmobiles or all terrain vehicles. Travel on roads which are gated and locked or designated as closed is prohibited, unless otherwise specified in annual regulations for nonambulatory persons holding valid permits.

(b) Only those vehicles registered as legal to operate on Oklahoma public roadways may be used or parked on lands owned or managed by the Oklahoma Department of Wildlife Conservation, except on specified areas designated for off-road use; unless otherwise provided for nonambulatory persons holding valid permits. All vehicles used by nonambulatory permittees must conspicuously display a sticker designating the vehicle is being used by a nonambulatory permittee and motor vehicle permittees must conspicuously display a sticker designating the vehicle is being used by a motor vehicle hunt permittee.

(c) Maximum speed limit shall be 25 mph unless otherwise posted.

(d) Off-highway vehicle (OHV) use on the Ouachita WMA shall be the same as U.S. Forest Service rules and regulations for the Ouachita National Forest.

(e) Off-highway vehicle (OHV) use on the Black Kettle and Rita Blanca WMAs shall be the same as U.S. Forest Service rules and regulations for the Cibola National Forest.

~~(f) Off-road vehicle use on the Honobia Creek WMA shall be regulated by the following:~~
~~(1) Off-Road Vehicles (ORV) and All-Terrain Vehicles (ATV) may be ridden on roads owned and maintained by John Hancock Mutual Life Insurance Company and managed by the Oklahoma Department of Wildlife as the Honobia Creek WMA. ORV/ATV use on county or state roads within the confines of the Honobia Creek WMA must comply with state requirements for street legal vehicles.~~
~~(2) Off-road travel by any motor vehicle, including ORVs and ATVs is prohibited.~~
~~(3) Motor vehicle travel, including ORVs and ATVs, on roads which are gated and locked, closed by an earthen mound, or otherwise designed as closed is prohibited.~~

(~~g~~f) It shall be unlawful to operate an all-terrain vehicle (ATV) or off-road vehicle (ORV) on the Three Rivers WMA and Honobia Creek WMA except under the following restrictions:
(1) During any open deer season.
(2) Any deer hunter licensed in Oklahoma, unless otherwise exempt.
(3) Any hunter while operating an ATV/ORV shall comply with daylight fluorescent orange head and chest covering as required for hunting deer gun seasons. If a

crash helmet is worn, only the fluorescent orange chest covering is required.

(4) ATV/ORV use is restricted to WMA roads that are delineated on the current Three Rivers WMA map and Honobia Creek WMA map unless otherwise closed.

(5) Only unaltered standard manufactured ATV/ORV's with a 700 cc motor displacement or less are allowed.

(6) ATV/ORV use shall be restricted to a maximum speed of 25 mph.

(7) Operator and/or passenger under the age of 18 shall wear a crash helmet of a type which complies with standards established by C.F.R., Section 571.218.

(8) No operator of an ATV/ORV shall carry a passenger unless that ATV/ORV has been specifically designed by the manufacturer to carry passengers in addition to the operator.

(9) Leaving any ATV/ORV, treestand, or game camera unattended on the Three Rivers and Honobia Creek WMA's ~~WMA~~ without the owner's name and address affixed thereto in a conspicuous manner is prohibited.

(10) Use of ATV/ORV off of delineated roads for retrieval of lawfully taken deer shall be permissible only with the following restrictions:

(A) ATV/ORV's shall not travel more than $\frac{1}{2}$ mile from the nearest road.

(B) ATV/ORV's shall not cross rivers and streams unless on a road with constructed stream crossing structures.

(C) ATV/ORV's used for deer retrieval shall not be used in areas otherwise closed to the use of motor vehicles (walk-in only hunting areas, etc.)

(~~h~~g) It is unlawful for any person to hunt, chase, capture, shoot, attempt to shoot, wound or kill any wildlife from a motor driven vehicle on any Department managed areas, except as provided for persons holding a nonambulatory motor vehicle hunting permit.

(~~i~~h) It is unlawful for any person to transport a loaded firearm on any Department managed area. No crossbow may be transported in a motor vehicle unless uncocked or disassembled. No bow that is at full or partial draw may be transported in a motorized vehicle. In addition, no person may take, catch, capture, kill or pursue wildlife or otherwise attempt to use for any purpose a vehicle mounted spotlight or other powerful light at night for any purpose on Department managed lands, except as otherwise provided for hunting of furbearers and predators, taking of frogs, or for navigational purposes while in a water conveyance.

(~~j~~i) Grassy Slough WMA, Hackberry Flat WMA, Red Slough WMA, Washita Arm WDU and Whitegrass Flats WMA are closed to all air driven water craft.

(~~k~~j) It shall be unlawful for any person to use, transport, park, or unload any personal watercraft within the land and/or water boundaries of the Fort Gibson Wildlife Management Area.

800:30-1-20. Restricted public use areas

(a) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (areas where camping is allowed) during the period October 1 - February 15: Beaver River, Canton, Lexington, except fishing and angler camping is permitted at Lake Dahlgren, Okmulgee, and Ellis County except fishing and angler camping is permitted at Lake Vincent, Fort Supply and Sandy Sanders.

(b) The following Wildlife Management Areas are closed to all non-hunting activities except hunter camping (on areas where camping is allowed) during the period October 1 - January 31and spring turkey season: Atoka, Cherokee, Cookson, Cross Timbers, James Collins, McGee Creek, Osage, Pushmataha, and Spavinaw.

(c) Lake Dahlgren shall be closed to all other activities during Lexington Wildlife Management Area designated controlled hunt dates.

(d) The following Conservation Education Areas are closed to all non-hunting and non-fishing activities during the period of October 1 - January 15 unless authorized by ODWC; camping and fires of any kind are not permitted unless authorized by ODWC: Arcadia Conservation Education Area.

800:30-1-21. Baiting on Wildlife Management Areas

It shall be unlawful to place bait on lands owned or managed by the Department of Wildlife Conservation. 'Bait' shall mean the placing, exposing, depositing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain or other feed.

[OAR Docket #12-706; filed 05-23-12]

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

1:2012-10A.

AMENDED EXECUTIVE ORDER 2012-10

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 28, 2012, and that are continuing, have caused extensive damage to public and private properties with 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:

Alfalfa, Craig, Delaware, Grant, Kay, Logan, Mayes, Nowata, Oklahoma, Osage, Ottawa, Pawnee, Pottawatomie, Tulsa and Washington.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on April 28, 2012, 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 29th day of May 2012.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #12-763; filed 5-29-12]

1:2012-13.

EXECUTIVE AUTHORIZATION 2012-13

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by the provisions of Sections 3316 and 3317 of Title 74 of the Oklahoma Statutes, hereby authorize CompSource Oklahoma to permanently continue to capture cost savings and improve services through exemption from certain general statutory provisions.

CompSource Oklahoma is hereby authorized to permanently continue the following compliance exemptions:

A. Compliance with the provisions of The Oklahoma Central Purchasing Act shall not be required of CompSource Oklahoma. However, CompSource Oklahoma shall observe internal purchasing procedures approved by the Purchasing Director of the Department of Central Services and keep records of acquisitions which shall be subject to audit by the Department of Central Services.

B. Compliance with the provisions of the Public Competitive Bidding Act of 1974, Public Building Construction

and Planning Act, and Consulting Services through the Construction and Properties Division of the Department of Central Services shall not be required of CompSource Oklahoma. However, CompSource Oklahoma shall observe internal procurement and bidding procedures and keep records of contracts and acquisitions which shall be subject to audit by the Department of Central Services.

C. Compliance with the provisions of the Oklahoma Surplus Property Act shall not be required of CompSource Oklahoma. However, CompSource Oklahoma shall observe internal property disposition procedures and keep records of property dispositions which shall be subject to audit by the Department of Central Services.

D. CompSource Oklahoma shall be exempted from the requirements of the Office of State Finance to file the annual budget work program, budget request, information systems plan, and telecommunications plan. However, CompSource Oklahoma shall continue to file an annual audited financial statement in accordance with governmental accounting standards.

E. CompSource Oklahoma shall further be exempted from conversion to CORE Phase II requirements of the Office of State Finance.

CompSource Oklahoma shall continue to be accountable to provide a report annually to the President Pro Tempore of the Senate, Speaker of the House of Representatives and Governor describing the methods and innovations utilized in its procurement processes, and the improved services and savings accrued as a result of these exceptions.

HOWEVER, CompSource Oklahoma is NOT authorized to continue the exception of compliance concerning obligations of Fleet Mangement. CompSource Oklahoma shall hereafter comply with Sections 78 through 78b of Title 74 of the Oklahoma Statutes concerning Fleet Management within the Department of Central Services and shall keep records and documentation of its motor-vehicle-related transactions which shall be subject to audit by the Department of Central Services.

Copies of this Executive Order shall be distributed to the Department of Central Services and the Director of the Office of State Finance for immediate implementation.

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 22nd day of May, 2012.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #12-690; filed 5-22-12]

1:2012-14.

EXECUTIVE ORDER 2012-14

I, Mary Fallin, Governor of the State of Oklahoma hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, May 23, 2012, to honor Jeffery McCoy who died while on official duty on Friday, May 18, 2012.

Officer McCoy, an Oklahoma Department of Corrections Probation and Parole Officer, had been employed by the Department of Correction since December of 2005.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 22nd of May, 2012.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Vickie L McAffee
Acting Assistant Secretary of State

[OAR Docket #12-691; filed 5-22-12]

1:2012-15.

EXECUTIVE ORDER 2012-15

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to 25 O.S. § 90.19, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Wednesday, May

30, 2012, to honor Second Lieutenant Tobias C. Alexander, an Oklahoma soldier, who died on May 20, 2012, at the age of 30 while on active duty supporting Operation Enduring Freedom in Afghanistan.

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

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 29th day of May, 2012.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #12-764; filed 5-29-12]

1:2012-16.

EXECUTIVE ORDER 2012-16

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, straight line winds, flash flooding and hail storms beginning May 29, 2012, 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, straight line winds, flash flooding and hail storms in the State of Oklahoma that threaten 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:

Alfalfa, Blaine, Bryan, Caddo, Canadian, Cleveland, Comanche, Cotton, Creek, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Harper, Kingfisher, Kiowa, Latimer, Lincoln, Logan, Love, Major, McClain, Oklahoma, Okmulgee, Pittsburg, Pottawatomie, Stephens, Tillman, Tulsa, Washita, Woods, and Woodward.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on May 29, 2012, 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.

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 30th day of May 2012.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
V. Glenn Coffee
Secretary of State

[OAR Docket #12-768; filed 5-30-12]